

ENDANGERED SPECIES

HEARINGS

BEFORE THE

SUBCOMMITTEE ON FISHERIES AND WILDLIFE CONSERVATION AND THE ENVIRONMENT

OF THE

COMMITTEE ON MERCHANT MARINE AND FISHERIES HOUSE OF REPRESENTATIVES

NINETY-THIRD CONGRESS

FIRST SESSION

ON

**H.R. 37, H.R. 470, H.R. 471, H.R. 1461, H.R. 1511, H.R. 2669,
H.R. 2735, H.R. 3310, H.R. 3696, H.R. 3795, H.R. 4755**

**BILLS TO PROVIDE FOR THE CONSERVATION, PROTECTION, AND
PROPAGATION OF SPECIES OR SUBSPECIES OF FISH AND WILDLIFE
THAT ARE THREATENED WITH EXTINCTION OR LIKELY WITHIN
THE FORESEEABLE FUTURE TO BECOME THREATENED WITH EX-
TINCTION, AND FOR OTHER PURPOSES**

H.R. 2169

**A BILL TO IMPLEMENT THE CONVENTION ON NATURE PROTECTION
AND WILDLIFE PRESERVATION IN THE WESTERN HEMISPHERE,
AND FOR OTHER PURPOSES**

H.R. 4758

**A BILL TO PROVIDE FOR THE CONSERVATION, PROTECTION, AND
PROPAGATION OF SPECIES OR SUBSPECIES OF FISH AND WILDLIFE
THAT ARE PRESENTLY THREATENED WITH EXTINCTION OR LIKELY
WITHIN THE FORESEEABLE FUTURE TO BECOME THREATENED
WITH EXTINCTION, AND FOR OTHER PURPOSES**

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ENDANGERED SPECIES

THURSDAY, MARCH 15, 1973

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON FISHERIES AND WILDLIFE
CONSERVATION AND THE ENVIRONMENT OF THE
COMMITTEE ON MERCHANT MARINE AND FISHERIES,
Washington, D.C.

The subcommittee met at 10:10 a.m., in room 1334, Longworth Office Building, Hon. John D. Dingell (chairman of the subcommittee) presiding.

Mr. DINGELL. The subcommittee will come to order.

The Chair is particularly pleased to welcome old friends, Christian Herter and Ambassador Coerr and their associates, to the committee for a statement today.

The Chair is particularly pleased to welcome you gentlemen upon the successful completion of your negotiations to draft a tough, workable treaty for the protection of endangered species of plants and animals.

The Chair does wish to commend you gentlemen, your associates and those who participated as part of the U.S. delegation on an outstanding job.

The 3 weeks of discussions, talks and horse-trading which have just recently concluded have produced a document of which you can justly be proud.

I am very much impressed by the fact that the draft convention which you have produced, potentially a highly controversial document, was ultimately worked out without the necessity for ever having had to put a section, clause, or word to a vote.

I wish that you could show us how this might be done in the Congress—we might be much more productive if we could follow your example.

As I am sure you are aware, the convention which was produced, generated originally by a congressional directive, was a little late, and we need not go into the reasons for that right now, but was certainly timely.

The timeliness of the convention is all the more significant in view of the fact that this committee intends shortly to begin hearings with a view to amending existing U.S. legislation protecting endangered species. It is my hope to develop further amendments to the legislation now pending before this committee in order to make the U.S. internal laws entirely consistent with the treaty which you are responsible for having produced.

In the course of your comments, you may care to discuss the additional requirements which the Congress imposed upon the executive

branch, and upon the State Department, to develop new international agreements for the protection of marine ecosystems and marine mammals.

Our Marine Mammal Protection Act calls for the convening of an international ministerial meeting for this purpose not be later than July 1 of this year.

I am constrained to remark that this date may not be possible to meet, in view of the brief time remaining, but I would hope that such a meeting can be brought off at the earliest possible time. I will no doubt be discussing this matter further with you.

I would also say that it is my hope that you gentlemen will be in a position to handle that matter as well. Your track record on the endangered species convention is such that your involvement in the Marine Mammal Conference could only be to the good.

Gentlemen, I thank you for coming up to be with us today. We look forward with pleasure to your presentation.

Mr. Secretary, you may proceed.

**STATEMENT OF HON. CHRISTIAN A. HERTER, SPECIAL ASSISTANT
TO THE SECRETARY OF STATE, ACCOMPANIED BY AMBASSADOR
WYMBERLEY COERR, DELEGATE TO THE CONVENTION ON INTER-
NATIONAL TRADE IN ENDANGERED SPECIES OF WILD FAUNA
AND FLORA**

Mr. HERTER. Thank you very much, Mr. Chairman and particularly thanks for your very kind remarks with respect to the negotiations we have recently completed on a Convention on Endangered Species of Wild Fauna and Flora and let me say that we spend a good deal of time in developing a definition that was satisfactory to everybody in this regard.

Simply by way of background, Mr. Chairman, I would point out that the United States is a member of other far smaller international conventions dealing with endangered species or dealing with species that are subject to regulation. For example, historically there have been two types of conventions, those that you might call catch oriented where the whole purpose is to control the harvest of species, such as the International Whaling Convention, the Northwest Atlantic Fisheries Convention, et cetera, and we have obviously in a few instances become parties to what you might call preservation oriented conventions such as those involving the migratory birds.

There has never been any major worldwide convention until this one that dealt with trade in endangered species or nearly endangered species and you might well ask, well why is trade so important and why is trade a factor in a thing of this kind?

Of course, the answer is that for many of the species we have been concerned with, both flora and fauna, the problems of trade are the ones that create the greatest problem of endangerment.

I am not sure the committee, Mr. Chairman, is aware of some of the figures with respect to what the United States annually does in this whole area, but I thought it would be useful for the record just to point out that trade is a major factor in endangerment.

Mr. Chairman, we have such examples as vicuna wool, crocodile and alligator skins, tiger skins, turtle shells, whale oil; feathers from

the ibis. The United States imported in hides into this country in the year 1968 alone 9,556 leopards; 129,000 ocelots; 1,200 cheetahs. This number went up the following year and in 1970 it was considerably less. However, in 1971 in terms of live animal imports for pets, the zoos, for medical purposes, for a whole variety of purposes in the United States, this country in that one year imported 89,000 mammals. These are live specimens, Mr. Chairman. Also 770,000 birds, 2 million reptiles, 573,000 amphibians and 93 million fish which I think is a fairly extraordinary picture of what a country like this alone contributes to the trade endangerment of species that we have been concerned with.

Now again for the record, Mr. Chairman, as you are well aware, the convention we negotiated 2 or 3 weeks ago got its start almost 10 years ago through the good offices and over the years the tremendous work performed by the International Union for the Conservation of Nature which I must say is a private organization, well, a nongovernmental organization and has made a fantastic contribution in moving this whole problem to the status of a treaty.

The first IUCN draft of a worldwide treaty was distributed in 1963. Comments were made by countries. Two more drafts reappeared over the following 10 years until finally a combined working paper was distributed composed of partially the IUCN draft and partially language agreed to by Kenya and the United States. This took a special trip to Kenya of two weeks duration to get a single working document that we could use for the purposes of the convention.

This working document, basically the IUCN draft, was the one that we used during the course of our negotiations. There have been extensive preparations by the United States and by other countries and we, Mr. Chairman, did in advance of the negotiations ask the ambassadors of countries from various regions throughout the world to come to the State Department both to impress on them the fact that we, the United States, were taking this very seriously and secondly, to be quite frank, to give them a brief rundown on what we were talking about and what was contained in the convention. I can assure you many public officials had no idea.

Finally, after we had finished negotiations, 80 nations who had participated in the preparation, a higher number than we had expected, signed the final act. All nations of the world have been included, including both Chinas, neither of whom accepted and as for the actual plenipotentiary convention itself we now have 25 signatures and you may recall under the provisions of the convention it comes into force when there are 10 ratifications.

As to the convention itself, I will say just a few words. As I indicated earlier this is a convention to control international trade in endangered species and the focus is on the trade aspect. It is not on national conservation practices.

The trade, if you like, is controlled by basically two methods. The first is a system of export and import controls, very rigidly defined under the terms of the convention through permits, certificates of origin and other evidences of genuineness and second, through a series of appendices, what we call during the course of the negotiations appendix I, II, and III.

Mr. Chairman, appendix I, agreed to by all parties to the convention, lists those really endangered species, endangered to the point of extinction. Appendix II deals with what we call the semibasket cases,

those not threatened with extinction but unless there is control of some kind of an international basis in their trade they may become rapidly an appendix I species. Finally, we had a new version of an appendix called appendix III. These are species very much endangered in a particular country, although not endangered throughout their range. The particular country concerned has the privilege under the convention of listing such a species on appendix III, even though one could not say this particular species on a worldwide basis was endangered. It may be endangered in the particular country and the country then has the right to ask international cooperation in controlling the trade in that species and at the time of ratification all countries are invited to submit their list of appendix III items.

Also, Mr. Chairman a new thought was introduced into this particular convention and that was what do you do about marine species that are in an environment or in waters that are beyond the control of any national government.

We did get an entirely new concept. It was not greeted I might say with much enthusiasm. It is called Introduction From the Seas and we have gotten agreement on controls where species are taken from international waters essentially and brought into a particular country either for consumption or reexport.

Without getting into the specific provisions of the convention, Mr. Chairman, let me at least point out the major areas of what you might call contention during the course of the negotiations.

Curiously enough, these did not involve, as has been so true with many international gatherings, some sort of a confrontation between the developed and the developing countries, or even in this case the exporting and the consuming countries.

Really, the major source of contention—which was reflected in our negotiation and in the drafting of every article of the convention—was the differing point of view between the conservationists and the customs officials of consuming countries. Many customs officials essentially said we will go along with the basic concept of this convention but please make it a practical convention; one that can be administered as a practical matter in the international trade of the world.

The only time a confrontation, if you like, occurred was between the conservationist on the one hand, total protection, the customs people on the other hand. OK for your protection but it's got to be practical; it has to be something we can administer otherwise the convention itself really makes no sense.

We had a number of confrontations, disputes, contentions and a great deal of practical arguing back and forth, arriving at trade-offs in this particular area of concern.

Take for example the definition of the word "specimen." Everyone could agree that a specimen could be a live animal, a specimen of a species, or perhaps the hide of a specimen. You had difficulties when you had to define further the products derived from these specimens and which have to be controlled under the terms of the convention by customs officials.

In this instance a compromise was reached where specimen as a definition includes a readily identifiable part or derivative. It took most of the 3 weeks to get this definition worked out and was finally agreed to by the customs people and seemed to satisfy also the conservationists.

Well, there were a number of issues obviously. The Introduction From the Seas issues: How do you handle the problem of marine species was a source of considerable negotiation and debate and such questions as the issue of sovereignty as it applied to appendix III; can a country which considers a species within its border endangered require other countries to impose international controls?

Several countries said this is simply a violation of our sovereignty. Well, we finally resolved this one by permitting the country of import to object to dealing with a particular species within a stated time period.

If no objection is received, then the control provisions of the convention do apply.

Overall, Mr. Chairman, I will just simply wind up my observations now. I have some general observations that I think would be useful to get on the record.

The most extraordinary degree of cooperation and hard work was evident. The people participating were interested in getting a job done and as a result, in this frame of mind, they put in many, many long hours in negotiating and always with the urge to finally get some sort of resolution so that you had a workable convention.

This dominated the spirit of the entire convention and I think was the most encouraging thing about it. People were determined to get some sort of a result and when they are in this frame of mind, they are willing to compromise; they are willing to compose their differences.

As I mentioned earlier, the normal political confrontation simply did not exist. The confrontations were of a different nature. We had no traditional bloc alignments, political alignments, no politics of this kind entered at any time into the negotiation of this convention.

As you know, on the question of administration of the convention and the establishment of a secretariat, the conference was extremely anxious that the U.N. Environmental Secretariat act as the secretariat or arrange for a secretariat in connection with the administration of the convention.

We received formal word from Maurice Strong that he would like very much to do it, but I think he feels and I think probably correctly so, that he has to get the approval of his governing council to take on the secretariat responsibility. This obviously involves some money and it involves something which was not originally contemplated for the U.N. Environmental Secretariat. The matter is left in that posture, and I am sure at the first meeting of the governing council of the U.N. environmental program, this matter will be on the agenda and hopefully, will be approved as recommended in the condition.

Mr. DINGELL. Mr. Herter, the committee wishes to commend you for a very helpful statement.

At this point in the record since so many brickbats flow to the State Department, particular commendation should go to Ambassador Coerr. I think sincere commendations are in order at this point.

Mr. Secretary, I intend to recognize my colleagues on the committee for questions and comment. I would like to ask and I think it would be useful to have a copy of the treaty in the record at this point.

Hearing no objection, it is so ordered.

[The material referred to above, follows:]

PLENIPOTENTIARY CONFERENCE
TO CONCLUDE AN INTERNATIONAL
CONVENTION ON TRADE IN CERTAIN SPECIES OF WILDLIFE



WASHINGTON, D.C.

CONVENTION
ON INTERNATIONAL TRADE IN ENDANGERED SPECIES
OF WILD FAUNA AND FLORA

signed March 3, 1973, Washington, D.C.

CONVENTION ON INTERNATIONAL TRADE IN ENDANGERED SPECIES
OF WILD FAUNA AND FLORA

The Contracting States,

RECOGNIZING that wild fauna and flora in their many beautiful and varied forms are an irreplaceable part of the natural systems of the earth which must be protected for this and the generations to come;

CONSCIOUS of the ever-growing value of wild fauna and flora from aesthetic, scientific, cultural, recreational and economic points of view;

RECOGNIZING that peoples and States are and should be the best protectors of their own wild fauna and flora;

RECOGNIZING, in addition, that international cooperation is essential for the protection of certain species of wild fauna and flora against over-exploitation through international trade;

CONVINCED of the urgency of taking appropriate measures to this end;

HAVE AGREED as follows:

ARTICLE I

Definitions

For the purpose of the present Convention, unless the context otherwise requires:

- (a) "Species" means any species, subspecies, or geographically separate population thereof;
- (b) "Specimen" means:
 - (i) any animal or plant, whether alive or dead;
 - (ii) in the case of an animal: for species included in Appendices I and II, any readily recognizable part or

derivative thereof; and for species included in Appendix III, any readily recognizable part or derivative thereof specified in Appendix III in relation to the species; and

- (iii) in the case of a plant: for species included in Appendix I, any readily recognizable part or derivative thereof; and for species included in Appendices II and III, any readily recognizable part or derivative thereof specified in Appendices II and III in relation to the species;

(c) "Trade" means export, re-export, import and introduction from the sea;

(d) "Re-export" means export of any specimen that has previously been imported;

(e) "Introduction from the sea" means transportation into a State of specimens of any species which were taken in the marine environment not under the jurisdiction of any State;

(f) "Scientific Authority" means a national scientific authority designated in accordance with Article IX;

(g) "Management Authority" means a national management authority designated in accordance with Article IX;

(h) "Party" means a State for which the present Convention has entered into force.

ARTICLE II

Fundamental Principles

1. Appendix I shall include all species threatened with extinction which are or may be affected by trade. Trade in specimens of these species must be subject to particularly strict regulation in order not to endanger further their survival and must only be authorized in exceptional circumstances.

2. Appendix II shall include:

(a) all species which although not necessarily now threatened with extinction may become so unless trade in specimens of such species is subject to strict regulation in order to avoid utilization incompatible with their survival; and

(b) other species which must be subject to regulation in order that trade in specimens of certain species referred to in sub-paragraph (a) of this paragraph may be brought under effective control.

3. Appendix III shall include all species which any Party identifies as being subject to regulation within its jurisdiction for the purpose of preventing or restricting exploitation, and as needing the cooperation of other parties in the control of trade.

4. The Parties shall not allow trade in specimens of species included in Appendices I, II and III except in accordance with the provisions of the present Convention.

ARTICLE III

Regulation of Trade in Specimens
of Species included in Appendix I

1. All trade in specimens of species included in Appendix I shall be in accordance with the provisions of this Article.

2. The export of any specimen of a species included in Appendix I shall require the prior grant and presentation of an export permit. An export permit shall only be granted when the following conditions have been met:

(a) a Scientific Authority of the State of export has advised that such export will not be detrimental to the survival of that species;

(b) a Management Authority of the State of export is satisfied that the specimen was not obtained in contravention of the laws of that State for the protection of fauna and flora;

(c) a Management Authority of the State of export is satisfied that any living specimen will be so prepared and shipped as to minimize the risk of injury, damage to health or cruel treatment; and

(d) a Management Authority of the State of export is satisfied that an import permit has been granted for the specimen.

3. The import of any specimen of a species included in Appendix I shall require the prior grant and presentation of an import permit and either an export permit or a re-export certificate. An import permit shall only be granted when the following conditions have been met:

(a) a Scientific Authority of the State of import has advised that the import will be for purposes which are not detrimental to the survival of the species involved;

(b) a Scientific Authority of the State of import is satisfied that the proposed recipient of a living specimen is suitably equipped to house

and care for it; and

(c) a Management Authority of the State of import is satisfied that the specimen is not to be used for primarily commercial purposes.

4. The re-export of any specimen of a species included in Appendix I shall require the prior grant and presentation of a re-export certificate. A re-export certificate shall only be granted when the following conditions have been met:

(a) a Management Authority of the State of re-export is satisfied that the specimen was imported into that State in accordance with the provisions of the present Convention;

(b) a Management Authority of the State of re-export is satisfied that any living specimen will be so prepared and shipped as to minimize the risk of injury, damage to health or cruel treatment; and

(c) a Management Authority of the State of re-export is satisfied that an import permit has been granted for any living specimen.

5. The introduction from the sea of any specimen of a species included in Appendix I shall require the prior grant of a certificate from a Management Authority of the State of introduction. A certificate shall only be granted when the following conditions have been met:

(a) a Scientific Authority of the State of introduction advises that the introduction will not be detrimental to the survival of the species involved;

(b) a Management Authority of the State of introduction is satisfied that the proposed recipient of a living specimen is suitably equipped to house and care for it; and

(c) a Management Authority of the State of introduction is satisfied that the specimen is not to be used for primarily commercial purposes.

ARTICLE IV

Regulation of Trade in Specimens of Species included in Appendix II

1. All trade in specimens of species included in Appendix II shall be in accordance with the provisions of this Article.

2. The export of any specimen of a species included in Appendix II shall require the prior grant and presentation of an export permit. An export permit shall only be granted when the following conditions have been met:

(a) a Scientific Authority of the State of export has advised that such export will not be detrimental to the survival of that species;

(b) a Management Authority of the State of export is satisfied that the specimen was not obtained in contravention of the laws of that State for the protection of fauna and flora; and

(c) a Management Authority of the State of export is satisfied that any living specimen will be so prepared and shipped as to minimize the risk of injury, damage to health or cruel treatment.

3. A Scientific Authority in each Party shall monitor both the export permits granted by that State for specimens of species included in Appendix II and the actual exports of such specimens. Whenever a Scientific Authority determines that the export of specimens of any such species should be limited in order to maintain that species throughout its range at a level consistent with its role in the ecosystems in which it occurs and well above the level at which that species might become eligible for inclusion in Appendix I, the Scientific Authority shall advise the

appropriate Management Authority of suitable measures to be taken to limit the grant of export permits for specimens of that species.

4. The import of any specimen of a species included in Appendix II shall require the prior presentation of either an export permit or a re-export certificate.

5. The re-export of any specimen of a species included in Appendix II shall require the prior grant and presentation of a re-export certificate. A re-export certificate shall only be granted when the following conditions have been met:

(a) a Management Authority of the State of re-export is satisfied that the specimen was imported into that State in accordance with the provisions of the present Convention; and

(b) a Management Authority of the State of re-export is satisfied that any living specimen will be so prepared and shipped as to minimize the risk of injury, damage to health or cruel treatment.

6. The introduction from the sea of any specimen of a species included in Appendix II shall require the prior grant of a certificate from a Management Authority of the State of introduction. A certificate shall only be granted when the following conditions have been met:

(a) a Scientific Authority of the State of introduction advises that the introduction will not be detrimental to the survival of the species involved; and

(b) a Management Authority of the State of introduction is satisfied that any living specimen will be so handled as to minimize the risk of injury, damage to health or cruel treatment.

7. Certificates referred to in paragraph 6 of this Article may be granted on the advice of a Scientific Authority, in consultation with other national scientific authorities or, when appropriate, international scientific authorities, in respect of periods not exceeding one year for total numbers of specimens to be introduced in such periods.

ARTICLE V

Regulation of Trade in Specimens of Species included in Appendix III

1. All trade in specimens of species included in Appendix III shall be in accordance with the provisions of this Article.

2. The export of any specimen of a species included in Appendix III from any State which has included that species in Appendix III shall require the prior grant and presentation of an export permit. An export permit shall only be granted when the following conditions have been met:

(a) a Management Authority of the State of export is satisfied that the specimen was not obtained in contravention of the laws of that State for the protection of fauna and flora; and

(b) a Management Authority of the State of export is satisfied that any living specimen will be so prepared and shipped as to minimize the risk of injury, damage to health or cruel treatment.

3. The import of any specimen of a species included in Appendix III shall require, except in circumstances to which paragraph 4 of this Article applies, the prior presentation of a certificate of origin and, where the import is from a State which has included that species in Appendix III, an export permit.

4. In the case of re-export, a certificate granted by the Management Authority of the State of re-export that the specimen was processed in that State or is being re-exported shall be accepted by the State of import as evidence that the provisions of the present Convention have been complied with in respect of the specimen concerned.

ARTICLE VI

Permits and Certificates

1. Permits and certificates granted under the provisions of Articles III, IV, and V shall be in accordance with the provisions of this Article.
2. An export permit shall contain the information specified in the model set forth in Appendix IV, and may only be used for export within a period of six months from the date on which it was granted.
3. Each permit or certificate shall contain the title of the present Convention, the name and any identifying stamp of the Management Authority granting it and a control number assigned by the Management Authority.
4. Any copies of a permit or certificate issued by a Management Authority shall be clearly marked as copies only and no such copy may be used in place of the original, except to the extent endorsed thereon.
5. A separate permit or certificate shall be required for each consignment of specimens.
6. A Management Authority of the State of import of any specimen shall cancel and retain the export permit or re-export certificate and any corresponding import permit presented in respect of the import of that specimen.

7. Where appropriate and feasible a Management Authority may affix a mark upon any specimen to assist in identifying the specimen. For these purposes "mark" means any indelible imprint, lead seal or other suitable means of identifying a specimen, designed in such a way as to render its imitation by unauthorized persons as difficult as possible.

ARTICLE VII

Exemptions and Other Special Provisions Relating to Trade

1. The provisions of Articles III, IV and V shall not apply to the transit or trans-shipment of specimens through or in the territory of a Party while the specimens remain in Customs control.
2. Where a Management Authority of the State of export or re-export is satisfied that a specimen was acquired before the provisions of the present Convention applied to that specimen, the provisions of Articles III, IV and V shall not apply to that specimen where the Management Authority issues a certificate to that effect.
3. The provisions of Articles III, IV and v shall not apply to specimens that are personal or household effects. This exemption shall not apply where:
 - (a) in the case of specimens of a species included in Appendix I, they were acquired by the owner outside his State of usual residence, and are being imported into that State; or
 - (b) in the case of specimens of species included in Appendix II:
 - (i) they were acquired by the owner outside his State of usual residence and in a State where removal from the wild occurred;

- (ii) they are being imported into the owner's State of usual residence; and
- (iii) the State where removal from the wild occurred requires the prior grant of export permits before any export of such specimens;

unless a Management Authority is satisfied that the specimens were acquired before the provisions of the present Convention applied to such specimens.

4. Specimens of an animal species included in Appendix I bred in captivity for commercial purposes, or of a plant species included in Appendix I artificially propagated for commercial purposes, shall be deemed to be specimens of species included in Appendix II.

5. Where a Management Authority of the State of export is satisfied that any specimen of an animal species was bred in captivity or any specimen of a plant species was artificially propagated, or is a part of such an animal or plant or was derived therefrom, a certificate by that Management Authority to that effect shall be accepted in lieu of any of the permits or certificates required under the provisions of Articles III, IV or V.

6. The provisions of Articles III, IV and V shall not apply to the non-commercial loan, donation or exchange between scientists or scientific institutions registered by a Management Authority of their State, of herbarium specimens, other preserved, dried or embedded museum specimens, and live plant material which carry a label issued or approved by a Management Authority.

7. A Management Authority of any State may waive the requirements of Articles III, IV and V and allow the movement without permits or certificates of specimens which form part of a travelling zoo, circus, menagerie, plant exhibition or other travelling exhibition provided that:

- (a) the exporter or importer registers full details of such specimens with that Management Authority;
- (b) the specimens are in either of the categories specified in paragraphs 2 or 5 of this Article; and
- (c) the Management Authority is satisfied that any living specimen will be so transported and cared for as to minimize the risk of injury, damage to health or cruel treatment.

ARTICLE VIII

Measures to be Taken by the Parties

1. The Parties shall take appropriate measures to enforce the provisions of the present Convention and to prohibit trade in specimens in violation thereof. These shall include measures:

- (a) to penalize trade in, or possession of, such specimens, or both; and
- (b) to provide for the confiscation or return to the State of export of such specimens.

2. In addition to the measures taken under paragraph 1 of this Article, a Party may, when it deems it necessary, provide for any method of internal reimbursement for expenses incurred as a result of the confiscation of a specimen traded in violation of the measures taken in the application of the provisions of the present Convention.

3. As far as possible, the Parties shall ensure that specimens shall pass through any formalities required for trade with a minimum of delay. To facilitate such passage, a Party may designate ports of exit and ports of entry at which specimens must be presented for clearance. The Parties shall ensure further that all living specimens, during any period of transit, holding or shipment, are properly cared for so as to minimize the risk of injury, damage to health or cruel treatment.

4. Where a living specimen is confiscated as a result of measures referred to in paragraph 1 of this Article:

(a) the specimen shall be entrusted to a Management Authority of the **State** of confiscation;

(b) the Management Authority shall, after consultation with the State of export, return the specimen to that State at the expense of that State, or to a rescue centre or such other place as the Management Authority deems appropriate and consistent with the purposes of the present Convention; and

(c) the Management Authority may obtain the advice of a Scientific Authority, or may, whenever it considers it desirable, consult the Secretariat in order to facilitate the decision under subparagraph (b) of this paragraph, including the choice of a rescue centre or other place.

5. A rescue centre as referred to in paragraph 4 of this Article means an institution designated by a Management Authority to look after the welfare of living specimens, particularly those that have been confiscated.

6. Each Party shall maintain records of trade in specimens of species included in Appendices I, II and III which shall cover:

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(a) the names and addresses of exporters and importers; and

(b) the number and type of permits and certificates granted; the States with which such trade occurred; the numbers or quantities and types of specimens, names of species as included in Appendices I, II and III and, where applicable, the size and sex of the specimens in question.

7. Each Party shall prepare periodic reports on its implementation of the present Convention and shall transmit to the Secretariat:

(a) an annual report containing a summary of the information specified in sub-paragraph (b) of paragraph 6 of this Article; and

(b) a biennial report on legislative, regulatory and administrative measures taken to enforce the provisions of the present Convention.

8. The information referred to in paragraph 7 of this Article shall be available to the public where this is not inconsistent with the law of the Party concerned.

ARTICLE IX

Management and Scientific Authorities

1. Each Party shall designate for the purposes of the present Convention:

(a) one or more Management Authorities competent to grant permits or certificates on behalf of that Party; and

(b) one or more Scientific Authorities.

2. A State depositing an instrument of ratification, acceptance, approval or accession shall at that time inform the Depositary Government of the name and address of the Management Authority authorized to communicate with other Parties and with the Secretariat.

3. Any changes in the designations or authorizations under the provisions of this Article shall be communicated by the Party concerned to

the Secretariat for transmission to all other Parties.

4. Any Management Authority referred to in paragraph 2 of this Article shall if so requested by the Secretariat or the Management Authority of another Party, communicate to it impression of stamps, seals or other devices used to authenticate permits or certificates.

ARTICLE X

Trade with States not Party to the Convention

Where export or re-export is to, or import is from, a State not a party to the present Convention, comparable documentation issued by the competent authorities in that State which substantially conforms with the requirements of the present Convention for permits and certificates may be accepted in lieu thereof by any Party.

ARTICLE XI

Conference of the Parties

1. The Secretariat shall call a meeting of the Conference of the Parties not later than two years after the entry into force of the present Convention.

2. Thereafter the Secretariat shall convene regular meetings at least once every two years, unless the Conference decides otherwise, and extraordinary meetings at any time on the written request of at least one-third of the Parties.

3. At meetings, whether regular or extraordinary, the Parties shall review the implementation of the present Convention and may:

(a) make such provision as may be necessary to enable the Secretariat to carry out its duties;

(b) consider and adopt amendments to Appendices I and II in

accordance with Article XV;

(c) review the progress made towards the restoration and conservation of the species included in Appendices I, II and III;

(d) receive and consider any reports presented by the Secretariat or by any Party; and

(e) where appropriate, make recommendations for improving the effectiveness of the present Convention.

4. At each regular meeting, the Parties may determine the time and venue of the next regular meeting to be held in accordance with the provisions of paragraph 2 of this Article.

5. At any meeting, the Parties may determine and adopt rules of procedure for the meeting.

6. The United Nations, its Specialized Agencies and the International Atomic Energy Agency, as well as any State not a Party to the present Convention, may be represented at meetings of the Conference by observers, who shall have the right to participate but not to vote.

7. Any body or agency technically qualified in protection, conservation or management of wild fauna and flora, in the following categories, which has informed the Secretariat of its desire to be represented at meetings of the Conference by observers, shall be admitted unless at least one-third of the Parties present object:

(a) international agencies or bodies, either governmental or non-governmental, and national governmental agencies and bodies; and

(b) national non-governmental agencies or bodies which have been approved for this purpose by the State in which they are located.

Once admitted, these observers shall have the right to participate but not to vote.

ARTICLE XII

The Secretariat

1. Upon entry into force of the present Convention, a Secretariat shall be provided by the Executive Director of the United Nations Environment Programme. To the extent and in the manner he considers appropriate, he may be assisted by suitable inter-governmental or non-governmental international or national agencies and bodies technically qualified in protection, conservation and management of wild fauna and flora.

2. The functions of the Secretariat shall be:

(a) to arrange for and service meetings of the Parties;

(b) to perform the functions entrusted to it under the provisions of Articles XV and XVI of the present Convention;

(c) to undertake scientific and technical studies in accordance with programmes authorized by the Conference of the Parties as will contribute to the implementation of the present Convention, including studies concerning standards for appropriate preparation and shipment of living specimens and the means of identifying specimens;

(d) to study the reports of Parties and to request from Parties such further information with respect thereto as it deems necessary to ensure implementation of the present Convention;

(e) to invite the attention of the Parties to any matter pertaining to the aims of the present Convention;

(f) to publish periodically and distribute to the Parties current editions of Appendices I, II and III together with any information which will facilitate identification of specimens of species included in the Appendices.

(g) to prepare annual reports to the Parties on its work and on the

implementation of the present Convention and such other reports as meetings of the Parties may request;

(h) to make recommendations for the implementation of the aims and provisions of the present Convention, including the exchange of information of a scientific or technical nature;

(i) to perform any other function as may be entrusted to it by the Parties.

ARTICLE XIII

International Measures

1. When the Secretariat in the light of information received is satisfied that any species included in Appendices I or II is being affected adversely by trade in specimens of that species or that the provisions of the present Convention are not being effectively implemented, it shall communicate such information to the authorized Management Authority of the Party or Parties concerned.

2. When any Party receives a communication as indicated in paragraph 1 of this Article, it shall, as soon as possible, inform the Secretariat of any relevant facts insofar as its laws permit and, where appropriate, propose remedial action. Where the Party considers that an inquiry is desirable, such inquiry may be carried out by one or more persons expressly authorized by the Party.

3. The information provided by the Party or resulting from any inquiry as specified in paragraph 2 of this Article shall be reviewed by the next Conference of the Parties which may make whatever recommendations it deems appropriate.

ARTICLE XIV

Effect on Domestic Legislation and International Conventions

1. The provisions of the present Convention shall in no way affect the right of Parties to adopt:

(a) stricter domestic measures regarding the conditions for trade, taking possession or transport of specimens of species included in Appendices I, II and III, or the complete prohibition thereof; or

(b) domestic measures restricting or prohibiting trade, taking possession, or transport of species not included in Appendices I, II or III.

2. The provisions of the present Convention shall in no way affect the provisions of any domestic measures or the obligations of Parties deriving from any treaty, convention, or international agreement relating to other aspects of trade, taking, possession, or transport of specimens which is in force or subsequently may enter into force for any Party including any measure pertaining to the Customs, public health, veterinary or plant quarantine fields.

3. The provisions of the present Convention shall in no way affect the provisions of, or the obligations deriving from, any treaty, convention or international agreement concluded or which may be concluded between States creating a union or regional trade agreement establishing or maintaining a common external customs control and removing customs control between the parties thereto insofar as they relate to trade among the States members of that union or agreement.

4. A State party to the present Convention, which is also a party to any other treaty, convention or international agreement which is in force at the time of the coming into force of the present Convention and under the

provisions of which protection is afforded to marine species included in Appendix II, shall be relieved of the obligations imposed on it under the provisions of the present Convention with respect to trade in specimens of species included in Appendix II that are taken by ships registered in that State and in accordance with the provisions of such other treaty, convention or international agreement.

5. Notwithstanding the provisions of Articles III, IV and V, any export of a specimen taken in accordance with paragraph 4 of this Article shall only require a certificate from a Management Authority of the State of introduction to the effect that the specimen was taken in accordance with the provisions of the other treaty, convention or international agreement in question.

6. Nothing in the present Convention shall prejudice the codification and development of the law of the sea by the United Nations Conference on the Law of the Sea convened pursuant to Resolution 2750 C (XXV) of the General Assembly of the United Nations nor the present or future claims and legal views of any State concerning the law of the sea and the nature and extent of coastal and flag State jurisdiction.

ARTICLE XV

Amendments to Appendices I and II

1. The following provisions shall apply in relation to amendments to Appendices I and II at meetings of the Conference of the Parties:

(a) Any Party may propose an amendment to Appendix I or II for consideration at the next meeting. The text of the proposed amendment shall be communicated to the Secretariat at least 150 days before the meeting. The Secretariat shall consult the other Parties and interested bodies on the amendment in accordance with the provisions of sub-paragraphs (b) and (c) of paragraph 2 of this Article and shall communicate the response to all Parties not later than 30 days before the meeting.

(b) Amendments shall be adopted by a two-thirds majority of Parties present and voting. For these purposes "Parties present and voting" means Parties present and casting an affirmative or negative vote. Parties abstaining from voting shall not be counted among the two-thirds required for adopting an amendment.

(c) Amendments adopted at a meeting shall enter into force 90 days after that meeting for all Parties except those which make a reservation in accordance with paragraph 3 of this Article.

2. The following provisions shall apply in relation to amendments to Appendices I and II between meetings of the Conference of the Parties:

(a) Any Party may propose an amendment to Appendix I or II for consideration between meetings by the postal procedures set forth in this paragraph.

(b) For marine species, the Secretariat shall, upon receiving the text of the proposed amendment, immediately communicate it to the Parties. It shall also consult inter-governmental bodies having a

function in relation to those species especially with a view to obtaining scientific data these bodies may be able to provide and to ensuring co-ordination with any conservation measures enforced by such bodies. The Secretariat shall communicate the views expressed and data provided by these bodies and its own findings and recommendations to the Parties as soon as possible.

(c) For species other than marine species, the Secretariat shall, upon receiving the text of the proposed amendment, immediately communicate it to the Parties, and, as soon as possible thereafter, its own recommendations.

(d) Any Party may, within 60 days of the date on which the Secretariat communicated its recommendations to the Parties under sub-paragraphs (b) or (c) of this paragraph, transmit to the Secretariat any comments on the proposed amendment together with any relevant scientific data and information.

(e) The Secretariat shall communicate the replies received together with its own recommendations to the Parties as soon as possible.

(f) If no objection to the proposed amendment is received by the Secretariat within 30 days of the date the replies and recommendations were communicated under the provisions of sub-paragraph (e) of this paragraph, the amendment shall enter into force 90 days later for all Parties except those which make a reservation in accordance with paragraph 3 of this Article.

(g) If an objection by any Party is received by the Secretariat, the proposed amendment shall be submitted to a postal vote in accordance with the provisions of sub-paragraphs (h), (i) and (j) of this paragraph.

(h) The Secretariat shall notify the Parties that notification of

objection has been received.

(i) Unless the Secretariat receives the votes for, against or in abstention from at least one-half of the Parties within 60 days of the date of notification under sub-paragraph (h) of this paragraph, the proposed amendment shall be referred to the next meeting of the Conference for further consideration.

(j) Provided that votes are received from one-half of the Parties, the amendment shall be adopted by a two-thirds majority of Parties casting an affirmative or negative vote.

(k) The Secretariat shall notify all Parties of the result of the vote.

(l) If the proposed amendment is adopted it shall enter into force 90 days after the date of the notification by the Secretariat of its acceptance for all Parties except those which make a reservation in accordance with paragraph 3 of this Article.

3. During the period of 90 days provided for by sub-paragraph (c) of paragraph 1 or sub-paragraph (1) of paragraph 2 of this Article any Party may by notification in writing to the Depositary Government make a reservation with respect to the amendment. Until such reservation is withdrawn the Party shall be treated as a State not a party to the present Convention with respect to trade in the species concerned.

ARTICLE XVI

Appendix III and Amendments thereto

1. Any party may at any time submit to the Secretariat a list of species which it identifies as being subject to regulation within its jurisdiction for the purpose mentioned in paragraph 3 of Article II. Appendix III shall include the names of the Parties submitting the species for inclusion therein, the scientific names of the species so submitted, and any parts or derivatives of the animals or plants concerned that are specified in relation to the species for the purposes of sub-paragraph (b) of Article I.
2. Each list submitted under the provisions of paragraph 1 of this Article shall be communicated to the Parties by the Secretariat as soon as possible after receiving it. The list shall take effect as part of Appendix III 90 days after the date of such communication. At any time after the communication of such list, any Party may by notification in writing to the Depositary Government enter a reservation with respect to any species or any parts or derivatives, and until such reservation is withdrawn, the State shall be treated as a State not a Party to the present Convention with respect to trade in the species or part or derivative concerned.
3. A Party which has submitted a species for inclusion in Appendix III may withdraw it at any time by notification to the Secretariat which shall communicate the withdrawal to all Parties. The withdrawal shall take effect 30 days after the date of such communication.
4. Any Party submitting a list under the provisions of paragraph 1 of this Article shall submit to the Secretariat a copy of all domestic laws and regulations applicable to the protection of such species, together with any interpretations which the Party may deem appropriate or the Secretariat may request. The Party shall, for as long as the species in question is

included in Appendix III, submit any amendments of such laws and regulations or any new interpretations as they are adopted.

ARTICLE XVII

Amendment of the Convention

1. An extraordinary meeting of the Conference of the Parties shall be convened by the Secretariat on the written request of at least one-third of the Parties to consider and adopt amendments to the present Convention. Such amendments shall be adopted by a two-thirds majority of Parties present and voting. For these purposes "Parties present and voting" means Parties present and casting an affirmative or negative vote. Parties abstaining from voting shall not be counted among the two-thirds required for adopting an amendment.
2. The text of any proposed amendment shall be communicated by the Secretariat to all Parties at least 90 days before the meeting.
3. An amendment shall enter into force for the Parties which have accepted it 60 days after two-thirds of the Parties have deposited an instrument of acceptance of the amendment with the Depositary Government. Thereafter, the amendment shall enter into force for any other Party 60 days after that Party deposits its instrument of acceptance of the amendment.

ARTICLE XVIII

Resolution of Disputes

1. Any dispute which may arise between two or more Parties with respect to the interpretation or application of the provisions of the present Convention shall be subject to negotiation between the Parties involved in the dispute.
2. If the dispute cannot be resolved in accordance with paragraph 1 of this

Article, the Parties may, by mutual consent, submit the dispute to arbitration, in particular that of the Permanent Court of Arbitration at The Hague, and the Parties submitting the dispute shall be bound by the arbitral decision.

ARTICLE XIX

Signature

The present Convention shall be open for signature at Washington until 30th April 1973 and thereafter at Berne until 31st December 1974.

ARTICLE XX

Ratification, Acceptance, Approval

The present Convention shall be subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Government of the Swiss Confederation which shall be the Depositary Government.

ARTICLE XXI

Accession

The present Convention shall be open indefinitely for accession. Instruments of accession shall be deposited with the Depositary Government.

ARTICLE XXII

Entry into Force

1. The present Convention shall enter into force 90 days after the date of deposit of the tenth instrument of ratification, acceptance, approval or accession, with the Depositary Government.
2. For each State which ratifies, accepts or approves the present Convention or accedes thereto after the deposit of the tenth instrument of

ratification, acceptance, approval or accession, the present Convention shall enter into force 90 days after the deposit by such State of its instrument of ratification, acceptance, approval or accession.

ARTICLE XXIII

Reservations

1. The provisions of the present Convention shall not be subject to general reservations. Specific reservations may be entered in accordance with the provisions of this Article and Articles XV and XVI.
2. Any State may, on depositing its instrument of ratification, acceptance, approval or accession, enter a specific reservation with regard to:
 - (a) any species included in Appendix I, II or III; or
 - (b) any parts or derivatives specified in relation to a species included in Appendix III.
3. Until a Party withdraws its reservation entered under the provisions of this Article, it shall be treated as a State not a party to the present Convention with respect to trade in the particular species or parts or derivatives specified in such reservation.

ARTICLE XXIV

Denunciation

Any Party may denounce the present Convention by written notification to the Depositary Government at any time. The denunciation shall take effect twelve months after the Depositary Government has received the notification.

ARTICLE XXV

Depositary

1. The original of the present Convention, in the Chinese, English, French, Russian and Spanish languages, each version being equally authentic, shall be deposited with the Depositary Government, which shall transmit certified copies thereof to all States that have signed it or deposited instruments of accession to it.
2. The Depositary Government shall inform all signatory and acceding States and the Secretariat of signatures, deposit of instruments of ratification, acceptance, approval or accession, entry into force of the present Convention, amendments thereto, entry and withdrawal of reservations and notifications of denunciation.
3. As soon as the present Convention enters into force, a certified copy thereof shall be transmitted by the Depositary Government to the Secretariat of the United Nations for registration and publication in accordance with Article 102 of the Charter of the United Nations.

IN WITNESS WHEREOF the undersigned Plenipotentiaries, being duly authorized to that effect, have signed the present Convention.

DONE at Washington this third day of March, One Thousand Nine Hundred and Seventy-three.

APPENDIX I

Interpretation:

1. Species included in this Appendix are referred to:
 - (a) by the name of the species; or
 - (b) as being all of the species included in a higher taxon or designated part thereof.
2. The abbreviation "spp." is used to denote all species of a higher taxon.
3. Other references to taxa higher than species are for the purposes of information or classification only.
4. An asterisk (*) placed against the name of a species or higher taxon indicates that one or more geographically separate populations, sub-species or species of that taxon are included in Appendix II and that these populations, sub-species or species are excluded from Appendix I.
5. The symbol (-) followed by a number placed against the name of a species or higher taxon indicates the exclusion from that species or taxon of designated geographically separate populations, sub-species or species as follows:
 - 101 Lemur catta
 - 102 Australian population
6. The symbol (+) followed by a number placed against the name of a species denotes that only a designated geographically separate population or sub-species of that species is included in this Appendix, as follows:
 - + 201 Italian population only
7. The symbol (/) placed against the name of a species or higher taxon indicates that the species concerned are protected in accordance with the International Whaling Commission's schedule of 1972.

FALUNAMAMMALIAMARSUPIALIAMacropodidae

Macropus parma
Onychogalea frenata
O. lunata
Lagorchestes hirsutus
Lagostrophus fasciatus
Caloprymnus campestris
Bettongia penicillata
B. lesueur
B. tropica

Phalangeridae

Wyulda squamicaudata

Burramyidae

Burramys parvus

Vombatidae

Lasiorchinus gillespiei

Peramelidae

Perameles bougainville
Chaeropus ecaudatus
Macrotis lagotis
M. leucura

Dasyuridae

Planigale tenuirostris
P. subtilissima
Sminthopsis psammophila
S. longicaudata
Antechinomys laniger
Myrmecobius fasciatus rufus

Thylacinidae

Thylacinus cynocephalus

PRIMATESLemuridae

Lemur spp. -101
Lepilemur spp.
Hapalemur spp.
Allocebus spp.
Cheirogaleus spp.
Mirocebus spp.
Phaner spp.

Indriidae

Indri spp.
Propithecus spp.
Avahi spp.

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Daubentonidae	<u>Daubentonia madagascariensis</u>
Callithricidae	<u>Leontopithecus (Leontideus) spp.</u> <u>Callimico goeldii</u>
Cebidae	<u>Saimiri oerstedii</u> <u>Chiropotes albinasus</u> <u>Cacajao spp.</u> <u>Alouatta palliata (villosa)</u> <u>Ateles geoffroyi frontatus</u> <u>A. g. panamensis</u> <u>Brachyteles arachnoides</u>
Cercopithecidae	<u>Cercocebus galeritus galeritus</u> <u>Macaca silenus</u> <u>Colobus badius rufomitratus</u> <u>C. b. kirkii</u> <u>Presbytis geei</u> <u>P. pileatus</u> <u>P. entellus</u> <u>Nasalis larvatus</u> <u>Simias concolor</u> <u>Pygathrix nemaeus</u>
Hylobatidae	<u>Hylobates spp.</u> <u>Symphalangus syndactylus</u>
Pongidae	<u>Pongo pygmaeus pygmaeus</u> <u>P. p. abelii</u> <u>Gorilla gorilla</u>
EDENTATA	
Dasypodidae	<u>Priodontes giganteus (=maximus)</u>
PHOLIDOTA	
Manidae	<u>Manis temmincki</u>
LAGOMORPHA	
Leporidae	<u>Romerolagus diazi</u> <u>Caprolagus hispidus</u>
RODENTIA	
Sciuridae	<u>Cynomys mexicanus</u>
Castoridae	<u>Castor fiber birulaia</u> <u>Castor canadensis mexicanus</u>

Muridae	<u>Zyzomys pedunculatus</u> <u>Leporillus conditor</u> <u>Pseudomys novae-hollandiae</u> <u>P. praeconis</u> <u>P. shortridgei</u> <u>P. fumeus</u> <u>P. occidentalis</u> <u>P. fieldi</u> <u>Notomys aguilio</u> <u>Xeromys myoides</u>
Chinchillidae	<u>Chinchilla brevicaudata boliviana</u>
CETACEA	
Platanistidae	<u>Platanista gangetica</u>
Eschrichtidae	<u>Eschrichtius robustus (glaucus)</u> /
Balaenopteridae	<u>Balaenoptera musculus</u> / <u>Megaptera novae-angliae</u> /
Balaenidae	<u>Balaena mysticetus</u> / <u>Eubalaena spp.</u> /
CARNIVORA	
Canidae	<u>Canis lupus monstrabilis</u> <u>Vulpes velox hebes</u>
Viverridae	<u>Prionodon pardicolor</u>
Ursidae	<u>Ursus americanus emmonsii</u> <u>U. arctos pruinosus</u> <u>U. arctos +201</u> <u>U. a. nelsoni</u>
Mustelidae	<u>Mustela nigripes</u> <u>Lutra longicaudis (platensis/annectens)</u> <u>L. felina</u> <u>L. provocax</u> <u>Pteronura brasiliensis</u> <u>Aonyx microdon</u> <u>Enhydra lutris nereis</u>
Hyaenidae	<u>Hyaena brunnea</u>
Felidae	<u>Felis planiceps</u> <u>F. nigripes</u> <u>F. concolor coryi</u> <u>F. c. costaricensis</u> <u>F. c. cougar</u> <u>F. temmincki</u>

Felidae
continued

Felis bengalensis bengalensis
F. yagouaroundi cacomitli
F. y. fossata
F. y. panamensis
F. y. tolteca
F. pardalis mearnsi
F. p. mitis
F. wiedii nicaraguae
F. w. salvinia
F. tigrina oncula
F. marmorata
F. jacobita
F. (Lynx) rufa escuinapae
Neofelis nebulosa
Panthera tigris*
P. pardus
P. uncia
P. onca
Acinonyx jubatus

PINNIPEDIA

Phocidae

Monachus spp.
Mirounga angustirostris

PROBOSCIDEA

Elephantidae

Elephas maximus

SIRENIA

Dugongidae

Dugong dugon -102

Trichechidae

Trichechus manatus
T. inunguis

PERISSODACTYLIA

Equidae

Equus przewalskii
E. hemionus hemionus
E. h. khur
E. zebra zebra

Tapiridae

Tapirus pinchaque
T. bairdii
T. indicus

Rhinocerotidae

Rhinoceros unicornis
R. sondaicus
Didemnocerus sumatrensis
Ceratotherium simum cottoni

ARTIODACTYLA

Suidae

Sus salvanus
Babyrousa babyrussa

Camelidae

Vicugna vicugna
Camelus bactrianus

Cervidae

Moschus moschiferus moschiferus
Axis (Hyelaphus) porcinus annamiticus
A. (Hyelaphus) calamianensis
A. (Hyelaphus) kuhlii
Cervus duvauceli
C. eldi
C. elaphus hanglu
Hippocamelus bisulcus
H. antisiensis
Blastoceros dichotomus
Ozotoceros bezoarticus
Pudu pudu

Antilocapridae

Antilocapra americana sonoriensis
A. a. peninsularis

Bovidae

Bubalus (Anoa) mindorensis
B. (Anoa) depressicornis
B. (Anoa) quarlesi
Bos gaurus
B. (grunniens) mutus
Novibos (Bos) sauveli
Bison bison athabascaae
Kobus leche
Hippotragus niger variani
Oryx leucoryx
Damaliscus dorcas dorcas
Saiga tatarica mongolica
Nemorhaedus goral
Capricornis sumatraensis
Rupicapra rupicapra ornata
Capra falconeri jerdoni
C. f. megaceros
C. f. chiltanensis
Ovis orientalis ophion
O. ammon hodgsoni
O. vignei

AVES

TINAMIFORMES

Tinamidae

Tinamus solitarius

PODICIPEDIFORMES

Podicipedidae

Podilymbus gigas

PROCELLARIIFORMES

Diomedidae

Diomedea albatrus

PELECANIFORMES

Sulidae

Sula abbotti

Fregatidae

Fregata andrewsi

CICONIIFORMES

Ciconiidae

Ciconia ciconia boyciana

Threskiornithidae

Nipponia nippon

ANSERIFORMES

Anatidae

Anas aucklandica nesiotisAnas oustaletiAnas laysanensisAnas diaziCairina scutulataRhodonessa caryophyllaceaBranta canadensis leucopareiaBranta sandvicensis

FALCONIFORMES

Cathartidae

Vultur gryphusGymnogyps californianus

Accipitridae

Pithecophaga jefferyiHarpia harpyjaHaliaetus l. leucocephalusHaliaetus haliaca adalbertiHaliaetus albicilla groenlandicus

Falconidae

Falco peregrinus anatumFalco peregrinus tundriusFalco peregrinus peregrinusFalco peregrinus babylonicus

GALLIFORMES

Megapodiidae

Macrocephalon maleo

Cracidae

Crax blumenbachii
Pipile p. pipile
Pipile jacutinga
Mitu mitu mitu
Oreophasis derbianus

Tetraonidae

Tympanuchus cupido attwateri

Phasianidae

Colinus virginianus ridgwayi
Tragopan blythii
Tragopan caboti
Tragopan melanocephalus
Lophophorus sclateri
Lophophorus lhuysii
Lophophorus impejanus
Crossoptilon mantchuricum
Crossoptilon crossoptilon
Lophura swinhoii
Lophura imperialis
Lophura edwardsii
Symaticus ellioti
Symaticus humiae
Symaticus mikado
Polyplectron emphanum
Tetraogallus tibetanus
Tetraogallus caspius
Cyrtonyx montezumae merriami

GRUIFORMES

Gruidae

Grus japonensis
Grus leucogeranus
Grus americana
Grus canadensis pulla
Grus canadensis nesiotus
Grus nigricollis
Grus vipio
Grus monacha

Rallidae

Tricholimnas sylvestris

Rhynochetidae

Rhynochetos jubatus

Otidae

Eupodotis bengalensis

CHARADRIIFORMES

Scolopacidae

Numenius borealis
Tringa guttifer

Laridae

Larus relictus

COLUMBIFORMES

Columbidae

Ducula mindorensis

PSITTACIFORMES

Psittacidae

Strigops habroptilus
Rhynchopsitta pacyrhyncha
Amazona leucocephala
Amazona vittata
Amazona guildingii
Amazona versicolor
Amazona imperialis
Amazona rhodocorytha
Amazona petrei petrei
Amazona vinacea
Pyrrhura cruentata
Anodorhynchus glaucus
Anodorhynchus leari
Cyanopsitta spixii
Plonopsitta pileata
Aratinga guaruba
Psittacula krameri echo
Psephotus pulcherrimus
Psephotus chrysoterygius
Neophema chrysogaster
Neophema splendida
Cyanoramphus novaezelandiae
Cyanoramphus auriceps forbesi
Geopsittacus occidentalis
Psittacus erithacus princeps

APODIFORMES

Trochilidae

Ramphodon dohrnii

TROGONIFORMES

Trogonidae

Pharomachrus mocinno mocinno
Pharomachrus mocinno costaricensis

STRIGIFORMES

Strigidae

Otus gurneyi

CORACIIFORMES

Bucerotidae

Rhinoplax vigil

PICIFORMES

Picidae

Dryocopus javensis richardsii
Campephilus imperialis

PASSERIFORMES

Cotingidae	<u>Cotinga maculata</u> <u>Xipholena atro-purpurea</u>
Pittidae	<u>Pitta kochi</u>
Atrichornithidae	<u>Atrichornis clamosa</u>
Muscicapidae	<u>Picathartes gymnocephalus</u> <u>Picathartes oreas</u> <u>Psophodes nigrogularis</u> <u>Amytornis goyderi</u> <u>Dasyornis brachypterus longirostris</u> <u>Dasyornis broadbenti littoralis</u>
Sturnidae	<u>Leucopsar rothschildi</u>
Meliphagidae	<u>Meliphaga cassidix</u>
Zosteropidae	<u>Zosterops albogularis</u>
Fringillidae	<u>Spinus cucullatus</u>

AMPHIBIA

URODELA

Cryptobranchidae	<u>Andrias (=Megalobatrachus) davidianus</u> <u>japonicus</u> <u>Andrias (=Megalobatrachus) davidianus</u> <u>davidianus</u>
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SALIENTIA

Bufonidae	<u>Bufo superciliaris</u> <u>Bufo periglenes</u> <u>Nectophrynoides spp.</u>
Atelopodidae	<u>Atelopus varius zeteki</u>

REPTILIA

CROCODYLIA

Alligatoridae	<u>Alligator mississippiensis</u> <u>Alligator sinensis</u> <u>Melanosuchus niger</u> <u>Caiman crocodilus apaporiensis</u> <u>Caiman latirostris</u>
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Crocodylidae	<u>Tomistoma schlegelii</u> <u>Osteolaemus tetraspis tetraspis</u> <u>Osteolaemus tetraspis osborni</u> <u>Crocodylus cataphractus</u> <u>Crocodylus siamensis</u> <u>Crocodylus palustris palustris</u> <u>Crocodylus palustris kimbula</u> <u>Crocodylus novaeguineae mindorensis</u> <u>Crocodylus intermedius</u> <u>Crocodylus rhombifer</u> <u>Crocodylus moreletii</u> <u>Crocodylus niloticus</u>
Gavialidae	<u>Gavialis gangeticus</u>
TESTUDINATA	
Emydidae	<u>Batagur baska</u> <u>Geoclemmys (=Damonina) hamiltonii</u> <u>Geoemyda (=Nicoria) tricarinata</u> <u>Kachuga tecta tecta</u> <u>Morenia ocellata</u> <u>Terrapene coahuila</u>
Testudinidae	<u>Geochelone (=Testudo) elephantopus</u> <u>Geochelone (=Testudo) geometrica</u> <u>Geochelone (=Testudo) radiata</u> <u>Geochelone (=Testudo) yniphora</u>
Cheloniidae	<u>Eretmochelys imbricata imbricata</u> <u>Lepidochelys kempii</u>
Trionychidae	<u>Lissemys punctata punctata</u> <u>Trionyx ater</u> <u>Trionyx nigricans</u> <u>Trionyx gangeticus</u> <u>Trionyx hurum</u>
Chelidae	<u>Pseudemydura umbrina</u>
LACERTILIA	
Varanidae	<u>Varanus komodoensis</u> <u>Varanus flavescens</u> <u>Varanus bengalensis</u> <u>Varanus griseus</u>
SERPENTES	
Boidae	<u>Epicrates inornatus inornatus</u> <u>Epicrates subflavus</u> <u>Python molurus molurus</u>

RHYNCHOCEPHALIA

Sphenodontidae

Sphenodon punctatusPISCES

ACIPENSERIFORMES

Acipenseridae

Acipenser brevirostrumAcipenser oxyrhynchus

OSTEOGLOSSIFORMES

Osteoglossidae

Scleropages formosus

SALMONIFORMES

Salmonidae

Coregonus alpenae

CYPRINIFORMES

Catostomidae

Chasmistes cujus

Cyprinidae

Probarbus jullieni

SILURIFORMES

Schilbeidae

Pangasianodon gigas

PERCIFORMES

Percidae

Stizostedion vitreum glaucumMOLLUSCA

NAIADODA

Unionidae

Conradilla caelataDromus dromasEpioblasma (=Dysnomia) florentina
curtisiEpioblasma (=Dysnomia) florentina
florentinaEpioblasma (=Dysnomia) sampsoniEpioblasma (=Dysnomia) sulcata
perobliquaEpioblasma (=Dysnomia) torulosa
gubernaculumEpioblasma (=Dysnomia) torulosa
torulosa

Unionidae
continued

Epioblasma (=Dysnomia) turgidula
Epioblasma (=Dysnomia) walkeri
Fusconaia cuneolus
Fusconaia edgariana
Lampsilis higginsii
Lampsilis orbiculata orbiculata
Lampsilis satura
Lampsilis virescens
Plethobasis cicatricosus
Plethobasis cooperianus
Pleurobema plenum
Potamilus (=Proptera) capax
Quadrula intermedia
Quadrula sparsa
Toxolasma (=Carunculina) cylindrella
Unio (Megalonaia/?/?) nickliniana
Unio (Lampsilis/?/?) tampicoensis
tecomatensis
Villosa (=Micromya) trabalis

FLORA

ARACEAE

Alocasia sanderiana
Alocasia zebrina

CARYOCARACEAE

Caryocar costaricense

CARYOPHYLLACEAE

Gymnocarpus przewalskii
Melandrium mongolicum
Silene mongolica
Stellaria pulvinata

CUPRESSACEAE

Pilgerodendron uviferum

CYCADACEAE

Encephalartos spp.
Microcycas calocoma
Stangeria erliopus

GENTIANACEAE

Prepusa hookeriana

HUMIRIACEAE

Vantanea barbourii

JUGLANDACEAE

Engelhardtia pterocarpa

LEGUMINOSAE

Ammopiptanthus mongolicum
Cynometra hemitomophylla
Platymiscium pleiostachyum

LILIACEAE

Aloe albida
Aloe pillansii
Aloe polyphylla
Aloe thornicroftii
Aloe vossii

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MELASTOMACEAE	<u>Lavoisiera itambana</u>
MELIACEAE	<u>Guarea longipetiolata</u> <u>Tachigalia versicolor</u>
MORACEAE	<u>Batocarpus costaricense</u>
ORCHIDACEAE	<u>Cattleya jongheana</u> <u>Cattleya skinneri</u> <u>Cattleya trianae</u> <u>Didickea cunninghamii</u> <u>Laelia lobata</u> <u>Lycaste virginalis</u> var. <u>alba</u> <u>Peristeria elata</u>
PINACEAE	<u>Abies guatemalensis</u> <u>Abies nebrodensis</u>
PODOCARPACEAE	<u>Podocarpus costalis</u> <u>Podocarpus parlatorei</u>
PROTEACEAE	<u>Orothamnus zeyheri</u> <u>Protea odorata</u>
RUBIACEAE	<u>Balmea stormae</u>
SAXIFRAGACEAE (GROSSULARIACEAE)	<u>Ribes sardoum</u>
TAXACEAE	<u>Fitzroya cupressoides</u>
UIMACEAE	<u>Celtis aetnensis</u>
WELWITSCHLIACEAE	<u>Welwitschia bainesii</u>
ZINGIBERACEAE	<u>Hedychium philippinense</u>

APPENDIX II

Interpretation:

1. Species included in this Appendix are referred to:
 - (a) by the name of the species; or
 - (b) as being all of the species included in a higher taxon or designated part thereof.
2. The abbreviation "spp." is used to denote all the species of a higher taxon.
3. Other references to taxa higher than species are for the purposes of information or classification only.
4. An asterisk (*) placed against the name of a species or higher taxon indicates that one or more geographically separate populations, sub-species or species of that taxon are included in Appendix I and that these populations, sub-species or species are excluded from Appendix II.
5. The symbol (#) followed by a number placed against the name of a species or higher taxon designates parts or derivatives which are specified in relation thereto for the purposes of the present Convention as follows:
 - # 1 designates root
 - # 2 designates timber
 - # 3 designates trunks
6. The symbol (-) followed by a number placed against the name of a species or higher taxon indicates the exclusion from that species or taxon of designated geographically separated populations, sub-species, species or groups of species as follows:
 - 101 Species which are not succulents

7. The symbol (+) followed by a number placed against the name of a species or higher taxon denotes that only designated geographically separate populations, sub-species or species of that species or taxon are included in this Appendix as follows:

- + 201 All North American sub-species
- + 202 New Zealand species
- + 203 All species of the family in the Americas.

FAUNAMAMMALIA

MARSUPIALIA

Macropodidae

Dendrolagus inustus
Dendrolagus ursinus

INSECTIVORA

Erinaceidae

Erinaceus frontalis

PRIMATES

Lemuridae

Lemur catta

Lorisidae

Nycticebus coucang
Loris tardigradus

Cebidae

Cebus capucinus

Cercopithecidae

Macaca sylvanus
Colobus badius gordonorum
Colobus verus
Rhinopithecus roxellanae
Presbytis johnii

Pongidae

Pan paniscus
Pan troglodytes

EDENTATA

Myrmecophagidae

Myrmecophaga tridactyla
Tamandua tetradactyla
chapadensis

Bradypodidae

Bradypus boliviensis

PHOLIDOTA

Manidae

Manis crassicaudata
Manis pentadactyla
Manis javanica

LAGOMORPHA

Leporidae

Nesolagus netscheri

RODENTIA

Heteromyidae

Dipodomys phillipsii phillipsii

- 4 -

Sciuridae	<u>Ratufa</u> spp. <u>Lariscus hosei</u>
Castoridae	<u>Castor canadensis frondator</u> <u>Castor canadensis repentinus</u>
Cricetidae	<u>Ondatra zibethicus bernardi</u>
Canidae	<u>Canis lupus pallipes</u> <u>Canis lupus irremotus</u> <u>Canis lupus crassodon</u> <u>Chrysocyon brachyurus</u> <u>Cuon alpinus</u>
Ursidae	<u>Ursus (Thalarcos) maritimus</u> <u>Ursus arctos</u> +201 <u>Helarctos malayanus</u>
Procyonidae	<u>Ailurus fulgens</u>
Mustelidae	<u>Martes americana atrata</u>
Viveridae	<u>Prionodon linsang</u> <u>Cynogale bennetti</u> <u>Helogale derbianus</u>
Felidae	<u>Felis yagouaroundi</u> * <u>Felis colocolo pajeros</u> <u>Felis colocolo crespoi</u> <u>Felis colocolo budini</u> <u>Felis concolor missoulensis</u> <u>Felis concolor mayensis</u> <u>Felis concolor azteca</u> <u>Felis serval</u> <u>Felis lynx isabellina</u> <u>Felis wiedii</u> * <u>Felis pardalis</u> * <u>Felis tigrina</u> * <u>Felis (=Caracal) caracal</u> <u>Panthera leo persica</u> <u>Panthera tigris altaica</u> (=amurensis)
PINNIPEDIA	
Otariidae	<u>Arctocephalus australis</u> <u>Arctocephalus galapagoensis</u> <u>Arctocephalus philippii</u> <u>Arctocephalus townsendi</u>
Phocidae	<u>Mirounga australis</u> <u>Mirounga leonina</u>

TUBULIDENTATA

Orycteropidae

Orycteropus afer

SIRENIA

Dugongidae

Dugong dugon*

Trichechidae

Trichechus senegalensis

PERISSODACTYLA

Equidae

Equus hemionus*

Tapiridae

Tapirus terrestris

Rhinocerotidae

Diceros bicornis

ARTIODACTYLA

Hippopotamidae

Choeropus liberiensis

Cervidae

Cervus elaphus bactrianusPudu mephistophiles

Antilocapridae

Antilocapra americana mexicana

Bovidae

Cephalophus monticolaOryx (tao) dammahAddax nasomaculatusPantholops hodgsoniCapra falconeri*Ovis ammon*Ovis canadensisAVES

SPHENISCIFORMES

Spheniscidae

Spheniscus demersus

RHEIFORMES

Rheidae

Rhea americana albescensPterocnemia pennata pennataPterocnemia pennata garleppi

TINAMIFORMES

Tinamidae

Rhynchotus rufescens rufescensRhynchotus rufescens pallescensRhynchotus rufescens maculicollis

CICONIIFORMES

Ciconiidae

Ciconis nigra

Threskiornithidae

Geronticus calvus
Platalea leucorodia

Phoenicopteridae

Phoenicopterus ruber chilensis
Phoenicoparrus andinus
Phoenicoparrus jamesi

PELECANIFORMES

Pelecanidae

Pelecanus crispus

ANSERIFORMES

Anatidae

Anas aucklandica aucklandica
Anas aucklandica chlorotis
Anas bernieri
Dendrocygna arborea
Sarkidiornis melanotos
Anser albifrons gambelli
Cygnus bewickii jankowskii
Cygnus melancoryphus
Coscoroba coscoroba
Branta ruficollis

FALCONIFORMES

Accipitridae

Gypaetus barbatus meridionalis
Aquila chrysaetos

Falconidae

Spp. *

GALLINIFORMES

Megapodiidae

Megapodius freycinet nicobariensis
Megapodius freycinet abbotti

Tetraonidae

Tympanuchus cupido pinnatus

Phasianidae

Francolinus ochropectus
Francolinus swierstrai
Catreus wallichii
Polyplectron malacense
Polyplectron germaini
Polyplectron bicalcaratum
Gallus sonneratii
Argusianus argus
Ithaginis cruentus
Cyrtonyx montezumae montezumae
Cyrtonyx montezumae mearnsi

GRUIFORMES

Gruidae

Balearica regulorum
Grus canadensis pratensis

Rallidae

Gallirallus australis hectori

Otidae

Chlamydotis undulata
Choriotis nigriceps
Otis tarda

CHARADRIIFORMES

Scolopacidae

Numenius tenuirostris
Numenius minutus

Laridae

Larus brunneicephalus

COLUMBIFORMES

Columbidae

Gallicolumba luzonica
Goura cristata
Goura scheepmakeri
Goura victoria
Caloenas nicobarica pelewensis

PSITTACIFORMES

Psittacidae

Coracopsis nigra barklyi
Prosopeia personata
Eunymphicus cornutus
Cyanoramphus unicolor
Cyanoramphus novaezelandiae
Cyanoramphus malherbi
Poicephalus robustus
Tanygnathus luzoniensis
Probosciger aterrimus

CUCULIFORMES

Musophagidae

Turaco corythax
Gallirex porphyreolophus

STRIGIFORMES

Strigidae

Otus mudipes newtoni

CORACIIFORMES

Bucerotidae

Buceros rhinoceros rhinoceros
Buceros bicornis
Buceros hydrocorax hydrocorax
Acemos narcondami

PICIFORMES

Picidae

Picus squamatus flavirostris

PASSERIFORMES

Cotingidae

Rupicola rupicola
Rupicola peruviana

Pittidae

Pitta brachyura nympha

Hirundinidae

Pseudochelidon sirintarae

Paradisaeidae

Spp.

Muscicapidae

Muscicapa rusecki

Fringillidae

Spinus yarrelliiAMPHIBIA

URODELA

Ambystomidae

Ambystoma mexicanum
Ambystoma dumerillii
Ambystoma lermaensis

SALIENTIA

Bufonidae

Bufo retiformis

CROCODYLIA

Alligatoridae

Caiman crocodilus crocodilus
Caiman crocodilus yacare
Caiman crocodilus fuscus (chiapasius)
Paleosuchus palpebrosus
Paleosuchus trigonatus

Crocodylidae

Crocodylus johnsoni
Crocodylus novaeguineae novaeguineae
Crocodylus porosus
Crocodylus acutus

TESTUDINATA

Emydidae

Clemmys mhlenbergi

Testudinidae

Chersine spp.
Geochelone spp.*
Gopherus spp.
Homopus spp.
Kinixys spp.

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	<u>Malacochersus</u> spp.
	<u>Pyxis</u> spp.
	<u>Testudo</u> spp. *
Cheloniidae	<u>Caretta caretta</u>
	<u>Chelonia mydas</u>
	<u>Chelonia depressa</u>
	<u>Eretmochelys imbricata</u> <u>bissa</u>
	<u>Lepidochelys olivacea</u>
Dermochelidae	<u>Dermochelys coriacea</u> .
Pelomedusidae	<u>Podocnemis</u> spp.
LACERTILIA	
Teiidae	<u>Cnemidophorus hyperythrus</u>
Iguanidae	<u>Conolophus pallidus</u>
	<u>Cololophus suberistatus</u>
	<u>Amblyrhynchus cristatus</u>
	<u>Phrynosoma coronatum</u> <u>blainvillei</u>
Helodermatidae	<u>Heloderma suspectum</u>
	<u>Heloderma horridum</u>
Varanidae	<u>Varanus</u> spp. *
SERPENTES	
Boidae	<u>Epicrates cenchris cenchris</u>
	<u>Eunectes notaeus</u>
	<u>Constrictor constrictor</u>
	<u>Python</u> spp. *
Colubridae	<u>Cyclagras gigas</u>
	<u>Pseudoboa cloelia</u>
	<u>Elachistodon westermanni</u>
	<u>Thamnophis elegans hammondi</u>
<u>PISCES</u>	
ACIPENSERIFORMES	
Acipenseridae	<u>Acipenser fulvescens</u>
	<u>Acipenser sturio</u>
OSTEOGLOSSIFORMES	
Osteoglossidae	<u>Arapaima gigas</u>
SALMONIFORMES	
Salmonidae	<u>Stenodus leucichthys leucichthys</u>

Salmo chrysogaster

CYPRINIFORMES

Cyprinidae

Plagopterus argentissimusPtychocheilus lucius

ATHERINIFORMES

Cyprinodontidae

Cynolebias constanciaeCynolebias marmoratusCynolebias minimusCynolebias opalescensCynolebias splendens

Poeciliidae

Xiphophorus couchianus

COELACANTHIFORMES

Coelacanthidae

Latimeria chalumnae

CERATODIFORMES

Ceratodidae

Neoceratodus forsteriMOLLUSCA

NAIADOIDA

Unionidae

Cyprogenia abertiEpioblasma (=Dysnomia) tomulosarangianaFusconaia subrotundaLampsilis breviculaLexingtonia dolabelloidesPleorobema clava

STYLOMMATOPHORA

Camaenidae

Papustyla (=Papuina) pulcherrima

Paraphantidae

Paraphanta spp. +202

PROSOBRANCHIA

Hydrobiidae

Coahuilix hubbsiCochliopina milleriDurangonella coahuilaeMexipyrus carranzaeMexipyrus churinceanusMexipyrus escobedaeMexipyrus lugoi

Mexipyrus mojarrales
Mexipyrus multilineatus
Mexithauma quadripaludium
Nymphophilus minckleyi
Paludiscala caramba

INSECTA

LEPIDOPTERA

Papilionidae

Parnassius apollo apollo

FLORA

APOCYNACEAE

Pachypodium spp.

ARALIACEAE

Panax quinquefolium

ARAUCARIACEAE

Araucaria araucana

CACTACEAE

Cactaceae spp. +203
Rhipsalis spp.

COMPOSITAE

Saussurea lappa #1

CYATHEACEAE

Cyathea (Hemitelia) capensis #3
Cyathea dredgei #3
Cyathea mexicana #3
Cyathea (Alsophila) salvinii #3

DIOSCOREACEAE

Dioscorea deltoidea #1

EUPHORBIACEAE

Euphorbia spp. -101

FAGACEAE

Quercus copeyensis #2

LEGUMINOSAE

Thermopsis mongolica

LILIACEAE

Aloe spp. *

MELIACEAE

Swietenia humilis #2

ORCHIDACEAE

Spp. *

PALMAE

Arenca ipot
Phoenix hanceana var. philippinensis
Zalacca clemensiana

PORTULACACEAE

Anacampseros spp.

PRIMULACEAE

Cyclamen spp.

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SOLANACEAE

Solanum silvestris

STERCULIACEAE

Basiloxylon excelsum #2

VERBENACEAE

Caryopteris mongolica

ZYGOPHYLLACEAE

Guaiacum sanctum #2

APPENDIX IV

CONVENTION ON INTERNATIONAL TRADE IN ENDANGERED SPECIES
OF WILD FAUNA AND FLORA

EXPORT PERMIT NO. _____

Exporting Country: _____Valid Until: (Date) _____

This permit is issued to: _____

address: _____

who declares that he is aware of the provisions of the Convention, for the purpose of exporting: _____

(specimen(s), or part(s) or derivative(s) of specimen(s)) 1/
of a species listed in Appendix I
Appendix II
Appendix III of the Convention as specified below.) } -2/(bred in captivity or cultivated in _____) 2/

This (these) specimen(s) is (are) consigned to: _____

address: _____ country: _____

at _____ on _____

(signature of the applicant for the permit)

at _____ on _____

(stamp and signature of the Management
Authority issuing the export permit)1/ Indicate the type of product2/ Delete if not applicable

Description of the specimen(s) or part(s) or derivative(s) of specimen(s), including any mark(s) affixed:

Living Specimens

<u>Species</u> (scientific and common name)	<u>Number</u>	<u>Sex</u>	<u>Size</u> (or volume)	<u>Mark</u> (if any)

Parts or Derivatives

<u>Species</u> (scientific and common name)	<u>Quantity</u>	<u>Type of Goods</u>	<u>Mark</u> (if any)

Stamps of the authorities inspecting:

(a) on exportation

(b) on importation *

* This stamp voids this permit for further trade purposes, and this permit shall be surrendered to the Management Authority.

Mr. DINGELL. Are there any other working papers or documents that ought to be inserted at this point in the record that you would think appropriate, Mr. Secretary?

Mr. HERTER. Sir, I think we have sent up two copies of the Final Act, which is an interesting document only in that it shows the countries that took part and it has the various committees, and so forth, and it has three resolutions, one on the Chinese language, one on the Russian language, and one with respect to the Secretariat of the United Nations.

I think you should have this by now and I believe that should also be put into your hearing record. I think these are the two most important documents, Mr. Chairman.

Mr. DINGELL. Without objection, the Final Act of the Plenipotentiary Conference to Conclude an International Convention on Trade in Certain Species of Wildlife will be inserted in the record at this point. (The Plenipotentiary Conference document follows:)

PLENIPOTENTIARY CONFERENCE
TO CONCLUDE AN INTERNATIONAL
CONVENTION ON TRADE IN CERTAIN SPECIES OF WILDLIFE



WASHINGTON, D.C.

FINAL ACT
OF
THE PLENIPOTENTIARY CONFERENCE TO CONCLUDE
AN INTERNATIONAL CONVENTION ON TRADE IN
CERTAIN SPECIES OF WILDLIFE
WASHINGTON, D.C.

FINAL ACT

of the Plenipotentiary Conference to Conclude an International Convention on Trade in Certain Species of Wildlife, Washington, D.C.

The Representatives of the Governments of the Plenipotentiary Conference to Conclude an International Convention on Trade in Certain Species of Wildlife met at Washington, D.C. from February 12 to March 2, 1973, for the purpose of preparing and adopting a convention on export, import and transit of certain species of wild fauna and flora. The Conference met in fulfillment of the recommendations stated in Resolution 99.3 of the United Nations Conference on the Human Environment held in Stockholm, June of 1972, which state as follows: "It is recommended that a plenipotentiary conference be convened as soon as possible, under appropriate governmental or intergovernmental auspices, to prepare and adopt a convention on export, import and transit of certain species of wild animals and plants."

The Conference was convened by the Government of the United States of America. Governments of the following States were represented at the Conference:

Afghanistan, Algeria, Argentina, Australia, Austria, Bangladesh, Belgium, Bolivia, Botswana, Brazil, Burundi, Cameroon, Canada, Central African Republic, Colombia, Costa Rica, Cyprus, Czechoslovakia, Denmark, Dominican Republic, Egypt, El Salvador, Finland, France, German Democratic Republic, Germany, Federal Republic of, Ghana, Greece, Guatemala, Guyana, Honduras, India, Indonesia, Iran, Israel, Italy, Japan, Jordan, Kenya, Khmer Republic, Korea, Republic of, Lebanon, Luxembourg, Malagasy Republic, Malawi, Mauritius, Mexico, Mongolia, Morocco, Netherlands, Niger, Nigeria, Pakistan, Paraguay, Panama, Peru, Philippines, Poland, Portugal, Rwanda, Senegal, Sierra Leone, South Africa, Spain, Sudan, Swaziland, Sweden, Switzerland, Tanzania, Thailand, Togo, Tunisia, Turkey, Union of Soviet Socialist Republics, United Kingdom, United States, Upper Volta, Venezuela, Vietnam, Republic of, and Zambia.

The Governments of Chad, Chile, Ecuador, Hungary, Ivory Coast, Jamaica, Kuwait and Norway were represented by Observers.

The following international organizations were represented by Observers:

Customs Cooperation Council, European Communities, Food and Agriculture Organization, International Council for Bird Preservation, International Union for Conservation of Nature and Natural Resources, United Nations Educational, Scientific and Cultural Organization.

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The Conference elected as Chairman, Mr. Christian A. Herter, Jr. (United States) and as Vice Chairmen, Dr. Francisco Vizcaino Murray (Mexico), Prof. Dr. Drs. h.c. Hans Karl Oskar Stubbe (German Democratic Republic), H.E. Ambassador S. T. Msindazwe Sukati (Swaziland), Dr. Donald F. McMichael (Australia) and Minister Abdul Habir (Indonesia). Dr. Donald F. McMichael (Australia) was appointed Rapporteur.

The Secretary General of the Conference was Mr. Francis J. Seidner, U.S. Department of State, and Mr. Frank Nicholls, International Union for Conservation of Nature and Natural Resources (IUCN), and Mr. John K. Mutinda (Kenya) were Assistant Secretaries General. Technical Secretaries were Sir Hugh Elliott (IUCN), Mr. Harry A. Goodwin (IUCN), Mr. John W. Grandy IV (National Parks and Conservation Association) and Mr. Collin Holloway (IUCN).

The Conference established the following committees:

Credentials Committee

Swaziland - Chairman
Mexico - Vice Chairman

Australia
German Democratic Republic

Indonesia

Drafting Committee

Dr. Duncan Poore (United Kingdom) - Chairman
Mr. Andres Rozental (Mexico) - Vice Chairman

Argentina	Korea, Republic of
Austria	Malagasy Republic
Brazil	Netherlands
Denmark	South Africa
France	Spain
German Democratic Republic	Sweden
Germany, Federal Republic of	Switzerland
Indonesia	Union of Soviet Socialist
Japan	Republics
Kenya	United States

Steering Committee

United States - Chairman
Secretary General (ex officio)

Australia	Mexico
German Democratic Republic	Swaziland
Indonesia	

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Committee I (Appendices - Animals)

Prof. Jorge Ibarra (Guatemala) - Chairman
 Mr. Perez Olindo (Kenya) - Vice Chairman

Argentina	Mexico
Australia	Mongolia
Brazil	Netherlands
Canada	Panama
Colombia	Philippines
Costa Rica	South Africa
Denmark	Sudan
France	Sweden
Germany, Federal Republic of	Thailand
Indonesia	Union of Soviet Socialist Republics
Italy	United Kingdom
Japan	United States
Korea, Republic of	

Committee II (Appendices - Plants)

Mr. William Hartley (Australia) - Chairman
 Mr. Romeo A. Arguelles (Philippines) - Vice Chairman

Argentina	Korea, Republic of
Brazil	Mexico
Canada	Mongolia
Denmark	Netherlands
Guatemala	South Africa
Indonesia	Union of Soviet Socialist Republics
Italy	United Kingdom
Japan	United States
Kenya	

Committee III (Customs Matters)

Dr. D.L. O'Connor (Australia) - Mr. Atsushi Tokinoya (Japan) - Chairmen
 Mr. Andrej Florin (German Democratic Republic) - Vice Chairman

Australia	Korea, Republic of
Austria	Mexico
Brazil	Netherlands
Canada	Sudan
France	Switzerland
Germany, Federal Republic of	United Kingdom
Indonesia	United States
Kenya	

A number of ad hoc committees were appointed to deal with special problems as the need arose.

The Conference convened in twenty-three Plenary Sessions.

Following its deliberations, the Conference adopted the text of a Convention on International Trade in Endangered Species of Wild Fauna and Flora. The Conference accepted the offer of the Government of the Swiss Confederation to act as Depositary Government.

The Executive Director of the United Nations Environment Programme has indicated he will be able to provide Secretariat services for the Convention. To the extent and in the manner he considers appropriate, he may be assisted by suitable intergovernmental or non-governmental, international and national agencies and bodies technically qualified in protection, conservation and management of wild fauna and flora.

The Convention has been opened for signature by the States participating in the Conference in Washington, this day until April 30, 1973, and thereafter shall be open for signature at Berne until December 31, 1974.

In addition to adopting a Convention on International Trade in Endangered Species of Wild Fauna and Flora, the Conference adopted the following resolutions which are annexed to this Final Act:

Resolution to Include the Chinese Language;
Resolution to Include the Russian Language;
Resolution on Article XII.

The original of this Final Act, the Chinese, English, French, Russian and Spanish texts of which are equally authentic, shall be deposited with the Government of the Swiss Confederation which shall transmit certified copies thereof to all States which participated in the present Conference.

IN WITNESS WHEREOF the Representatives have signed this Final Act.

DONE in Washington, on the second day of March of the year One Thousand Nine Hundred and Seventy-three.

RESOLUTION TO INCLUDE THE CHINESE LANGUAGE

THE CONFERENCE,

NOTING that the Chinese language text of the Convention on International Trade in Endangered Species of Wild Fauna and Flora must be properly prepared and included as an authentic text of this Convention,

RESOLVES:

That the Government of the United States, as host to the Conference, shall be invited to arrange for the preparation of the text of the Convention on International Trade in Endangered Species of Wild Fauna and Flora in the Chinese language and, communicate such Chinese text to all States participating in this Conference with a statement that any comments or suggestions regarding the conformity of the text with other authentic texts are to be communicated to the Government of the United States within one month after the date on which the text is transmitted to the participating States. The Government of the United States shall thereupon take into account any comments and suggestions received during the said one month period and, after resolving any inconsistencies, shall transmit the Chinese language text to the Depositary Government which shall include that text in the text of the Convention.

RESOLUTION TO INCLUDE THE RUSSIAN LANGUAGE

THE CONFERENCE,

NOTING that the Russian language text of the Convention on International Trade in Endangered Species of Wild Fauna and Flora must be properly prepared and included as an authentic text of this Convention,

RESOLVES:

That the Government of the United States, as host to the Conference, shall be invited to arrange for the preparation of the text of the Convention on International Trade in Endangered Species of Wild Fauna and Flora in the Russian language and, communicate such Russian text to all States participating in this Conference with a statement that any comments or suggestions regarding the conformity of the text with other authentic texts are to be communicated to the Government of the United States within one month after the date on which the text is transmitted to the participating States. The Government of the United States shall thereupon take into account any comments and suggestions received during the said one month period and, after resolving any inconsistencies, shall transmit the Russian language text to the Depositary Government which shall include that text in the text of the Convention.

RESOLUTION ON ARTICLE XII

THE CONFERENCE,

NOTING that Article XII of the Convention on International Trade in Endangered Species of Wild Fauna and Flora contemplates that the United Nations Environment Programme shall assume Secretariat responsibilities upon entry into force of the Convention;

AWARE of the fact that this assumption of responsibilities could be considered and determined at the June 1973 meeting of the Governing Council of the United Nations Environment Programme;

RECOGNIZING that adequate preparations must be made to ensure that the Contracting States may make an informal and well-considered choice in the event the United Nations Environment Programme is unable to assume those responsibilities;

1. Expresses the hope that the Governing Council will approve the undertaking of Secretariat functions by the United Nations Environment Programme;
2. Decides, in the event the United Nations Environment Programme has not assumed Secretariat functions by September 1, 1973, to invite any Parties to the Convention to communicate to the Depositary Government proposals concerning the possibility of another existing agency assuming the responsibilities of the Secretariat for consideration at the first Conference of the Contracting States;
3. Requests the Depositary Government to transmit to the Contracting states such proposals as are received at least ninety days in advance of the first Conference;
4. Invites the Depositary Government to assume Secretariat responsibilities on an interim basis pending consideration of this matter at the first Conference of Contracting States if the United Nations Environment Programme has not done so when the Convention enters into force. The Depositary Government may request the assistance of intergovernmental or non-governmental, international or national agencies and bodies technically qualified in protection, conservation and management of wild fauna and flora.

Mr. DINGELL. Mr. Secretary, the Chair will direct the members of the staff to work with you and see that we have such other appropriate documents as might be in order for the record.

The Chair recognizes, first, Mr. McCloskey.

Mr. McCLOSKEY. Mr. Herter, who is the depositary nation?

Mr. HERTER. The Government of Switzerland.

Mr. McCLOSKEY. With regard to the timing of this document, when would you anticipate the Senate ratification, assuming the ordinary course of events?

Mr. HERTER. We are hoping, sir, before many days are out, we will have a full and appropriate package transmitted from the President to the Senate.

Wymb, what would you say the timing was?

Ambassador COERR. We hope to get it to the White House in less than 2 weeks.

Mr. HERTER. And from the White House, transmitted up here, and we hope the ratification could occur this year.

Mr. McCLOSKEY. Who should take the initiative of preparing any changes in the U.S. law to effectuate this treaty?

Mr. HERTER. Well again, let me call on Ambassador Coerr. He has been working on the legislation and I think has an answer to this question, Mr. Congressman.

Ambassador COERR. I have been talking, sir, to the two lead agencies, that is Interior and Commerce. They are actively engaged at the moment in preparing possible changes to recommend in the administration's bill on endangered species which they believe would be the best vehicle for enabling legislation with regard to this convention.

I understand there is a hearing to be held on that on the 25th or 26th of this month.

Mr. DINGELL. Mr. Ambassador, you are almost exactly right: It is the 26th and 27th.

Mr. McCLOSKEY. Do I understand correctly, Mr. Chairman, that we would start work on the legislation?

Mr. DINGELL. That is one of the priority items of legislation before this committee.

Mr. McCLOSKEY. I would like to add my commendation to that of the chairman.

I do have one additional question. In the event of an early violation of this convention, where would it go, before the International Court?

Mr. HERTER. We do have a provision for the arbitration of disputes, resolution of disputes and this is always a major problem. It is awfully difficult to get countries to agree to any disciplinary action, but they are requested under article 18 first to negotiate between themselves where there are two parties to the dispute and if a dispute cannot be resolved in accordance with paragraph 1, the parties may, by mutual consent, submit the dispute to arbitration, in particular that of the Permanent Court of Arbitration at The Hague and the parties submitting the dispute shall be bound by the Arbitrator's decision.

I might point out in that connection with this, the words "in particular" and "that of the Permanent Court" were new words we put in because the Russians for example are not interested in the Court of Arbitration at The Hague. They have in mind some other courts of arbitration and they wanted to make it appear that the parties were not bound to use the Permanent Court of Arbitration at The Hague

but could use whatever convenient forum they wanted to for arbitration of disputes.

For the rest, sir, frankly I think it is going to be a matter of public exposure where there are clear violations of the convention that are not covered by national law, although all nations under the convention are asked to pass legislation reflecting the provisions of the convention.

Mr. McCLOSKEY. Well, I asked that question with regard to the endeavor of working toward world peace. I am wondering sometimes if this goal of world peace might be better served if the questions of environmental interest would be submitted to binding arbitration or to the Court for a decision.

I take it that in negotiation of a convention of even this kind, that you run into national reluctance to enter into any substantive agreements.

Mr. HERTER. Very much so. We ran into it in the Ocean Dumping Convention. Nonetheless, countries attending this convention wanted something in on disputes. This was not part of the original draft, so there seemed to be a considerable willingness to get some language in and it was drafted at the time of the convention and adopted.

I think there is a feeling that you have to begin developing a mechanism for resolving disputes. I know this is something that Maurice Strong is beginning to develop himself; mechanisms of a worldwide nature for enforcement, arbitration, negotiation, mediation of the provisions of all these international conventions. We just have not gotten there yet.

Mr. McCLOSKEY. Thank you.

Mr. DINGELL. Mr. Breaux?

Mr. BREAU. Thank you, Mr. Chairman.

Mr. Secretary and Mr. Ambassador, let me thank you for a fine presentation and commend you and your associates for your efforts in making this treaty a reality.

I would like to ask whether or not any provision or recommendation has been made regarding countries who are not signatories to the treaty, yet who we feel should follow the guidelines of the treaty? Do we have any methods we might use to encourage them to follow the treaty's guidelines, or are there any sanctions which could be imposed?

Mr. HERTER. Well, Congressman, this no doubt was as you pointed out a difficult aspect. How do you do it?

Well, the only way you can reach countries not a party to the convention is through those parties that are members of the convention and who are asked to import endangered species from parties not party to the convention, if you follow what I am saying. The only control you have is to put the obligation on members who have signed the convention with respect to their trade with parties that are not members of the convention. We do have an article, article 10, "Trade with States not a Party to the Convention," which says—and it is a very short article, subject again to considerable negotiation—"where export or reexport is to, or import is from a state not a party to the present convention, comparable documentation issued by the competent authorities in that state which substantially conforms with the requirements of the present convention for permits and certificates may be accepted in lieu thereof by any party."

So you see there is an obligation to require comparable documents from a state not a party to the convention.

Mr. BREAUX. Let me ask you this if I may. Who would supervise the treaty enforcement as far as the United States is concerned? What department would handle this?

Mr. HERTER. Well basically, sir, and I do not want to give you a final answer on this, but the whole problem of endangered species is within the jurisdiction of the Department of Interior.

Department of State's role in this was in a sense because Congress directed it to call together the International Conference and to run the conference, but Interior is the lead agency and I suppose the Department of Commerce also.

Ambassador COERR. For certain species, yes.

Mr. BREAUX. Do you envision the necessity for legislation which would increase the enforcement personnel or responsibilities of the treaty within the Department of State?

Ambassador COERR. I can only answer it by saying that they are studying this problem and they have reached no firm conclusions at all at this moment.

Mr. BREAUX. Permit me to refer again to the district I represent—Southwest Louisiana. A great portion of this district is swampland and a great number of the inhabitants are alligators. Can you tell me if appendix I or II includes alligators on the endangered species list?

Ambassador COERR. The alligators? I am not sure if it contains that particular one. My impression is that it does.

Mr. BREAUX. In appendix I?

Ambassador COERR. I think so.

Mr. HERTER. I know alligators are one of the ones on the list but whether it is appendix I or II, I am not sure.

Mr. BREAUX. The reason I brought up the matter is that Louisiana has had an endangered species list for several years. However, in the past year we reopened the season on alligators because their number had increased. It was a very successful season and—to my understanding—alligators are not an endangered species any longer.

Mr. HERTER. For the purposes of the convention, I think it is on the list, yes.

Mr. BREAUX. Thank you, Mr. Secretary.

Mr. DINGELL. Mr. Cohen?

Mr. COHEN. Thank you, Mr. Chairman.

Just one question, Mr. Secretary. I would ask you what specific enforcement responsibilities have been added by this convention as far as the United States is concerned.

Mr. HERTER. As far as the United States is concerned, sir, the United States obviously has its own legislation and it is being amended and comes before this committee, I guess, March 26 and 27, the Endangered Species Act, which governs U.S. legislation on the subject and, hopefully, will be amended to reflect our obligations under this convention. Of course, there is the Lacy Act which is in force.

I guess you are aware of the tremendous legal proceeding that was brought under the Lacy Act. In fact, criminal suit was brought against a trading firm in New York by the Department of Interior—a firm called Vesely-Forte—and many other firms in New York. This is a

matter of public record in which the Department of Justice got guilty pleas from 32 firms that had been involved in \$5 million worth of trade in endangered species over the last 18 months.

Mr. COHEN. What I was getting at is, do you anticipate any buildup in the cost and personnel in order to secure the enforcement aspects of this convention in the Department of Interior?

Mr. HERTER. The Department of Interior apparently is considering this now. They have not reached conclusions as to whether they will have to enlarge the customs complement or not.

As you know, the Department of Interior now has in addition to the Department of Customs—animal inspectors. For example, at New York, we had testimony in the convention from an expert in detecting the import of illegal animal hides and this sort of thing. There are only two at New York and they are obviously limited as to what they can do, but, apparently, during the course of time become very experienced and one of the purposes for asking them to speak to the convention which they did was to point out that we have had considerable success in being able to detect the protected species.

Many foreign customs officials that were present at the convention said this is impossible from the administrative point of view. Our people pointed out it is not possible. It can be done and we have had very good success even at the Kennedy Airport where an awful lot of people come in—some 14,000 a day.

Mr. COHEN. Is the Department of Interior considering this matter right now?

Mr. HERTER. They are. How they come out, I cannot answer.

Mr. COHEN. Thank you.

Mr. DINGELL. Mr. Metcalfe?

Mr. METCALFE. No questions.

Mr. DINGELL. Mr. Studds?

Mr. STUDDS. Thank you, Mr. Chairman.

I am delighted, sir, that Latin is no longer a requirement of the Department of State.

Under Reptillia we have Crocodylia, and under Alligator-idae, we have Alligator mississippiensis.

Mr. DINGELL. They are Mr. Breaux's alligators.

Mr. STUDDS. I apologize for missing the first part of your testimony and you may have answered a couple of my questions.

I assume you got into this. How many nations were a party to the convention?

Mr. HERTER. Yes, sir. We had 80 signatories on the Final Act. That, as you know, is a different operation than the convention itself.

Mr. STUDDS. Yes.

Mr. HERTER. And 25 countries have signed the convention. The convention is open for signature here in Washington. There are 21 countries that signed the day we had the formal signing. Four have since signed and it is open until April 30 in Washington, at which time the convention goes to the depositary government which is Switzerland, in Berne, for further accession and further signature as countries decide they wish to sign the convention.

Mr. STUDDS. Were there significant countries that did not participate—significant by their absence?

Mr. HERTER. In terms of total participation I would have to say no. The People's Republic of China did not participate, neither did the Republic of China.

They, Mr. Studds, were the only two major countries that were not participants.

Ambassador COERR. As far as the major wildlife countries are concerned, Ethiopia did not participate but indicates its willingness to accede to a convention subsequently.

Mr. STUDDS. You mentioned that the usual political rivalries did not develop, but you did say there were conservationists versus anti-conservationists. Can you elaborate on how that broke down, what sorts of nations tend to be conservationists?

Mr. HERTER. Most countries were conservation minded. You did have the big trading nations, particularly the Common Market nations, that were very sensitive to the practical implications of simply putting under permit all parts of specimens and species where they knew perfectly well they could not as a practical matter handle it through customs.

The United States and Kenya were two of the countries most strongly on the conservation side, so that you did not have, you know, developed versus developing world in this sense at all.

I would say the United Kingdom, the Netherlands, and many of the countries do have difficult enforcement customs problems. Even the Australians, who are a little on both sides of this, had a customs man here who was extremely good, and he was head of our Customs Committee.

After nearly 2 weeks of negotiations in committee, they worked out a formula that both sides felt they could live with.

Mr. STUDDS. Thank you, sir. Thank you, Mr. Chairman.

Mr. DINGELL. Mr. Goodling?

Mr. GOODLING. No questions. Mr. Chairman, I want to say I am sorry I was delayed in getting here. We had a very important meeting next door that I was obligated to attend.

Mr. DINGELL. The Chair does observe that both the gentleman from Pennsylvania and the gentleman from Michigan were designated by the speaker to participate in and observe the conference.

I am satisfied that Mr. Goodling shares my feeling of a job well done.

Mr. Young?

Mr. YOUNG. I have no questions. I must apologize, Mr. Chairman, that I am late in arriving, but I had to attend the meeting with Mr. Goodling.

Mr. DINGELL. Mr. Potter?

Mr. POTTER. I have one question which will probably demonstrate my ignorance in the matter. The treaty indicates the convention will be open for signature in effect, in this country and in Switzerland until December 31, 1974, but I gather that as a practical matter anybody can accede to it.

Mr. HERTER. At any time.

Mr. POTTER. So that the fact that the treaty is open for signature does not mean a thing in terms of who can join and who cannot, is that right?

Mr. HERTER. No. If I can try and answer that—and that is an awfully good question—there is a feeling in the international community that those countries who wish to immediately get on board should become sort of founding fathers.

Mr. POTTER. Charter members.

Mr. HERTER. Precisely, and that is why there is a limited period of time for signature of the treaty and for ratification, although accession can take place at any time.

Mr. POTTER. I gather you have been involved in some fairly hairy discussions with representatives of the State Department about what nations could and could not accede to different treaties.

Do we now assume that the United States is, at least as far as this treaty is concerned, willing to let anybody in whether or not they are eligible according to the Vienna formula or any other formula? Is it open even to such countries even with whom we do not engage in diplomatic negotiation?

Mr. HERTER. Let me say the treaty is silent on that.

Mr. POTTER. I doubt if it was an oversight.

Mr. HERTER. The present convention shall be open for signature at Washington; shall be open indefinitely for accession, and that is all that it says.

Mr. POTTER. Very diplomatic. This treaty addresses itself as you indicated earlier to the question of trade, and I think that is certainly a major problem.

There is also a problem with respect to endangered species in the context of the protection of the habitat upon which they depend. Did that enter into the discussion, and what resolution, if any, was reached on the subject?

Mr. HERTER. To answer your question, Mr. Potter, it did enter into the discussion although it was clearly understood from the start that individual national practices with respect to the protection of habitat or anything else could not be part or were not going to be part of this particular treaty.

Clearly, Mr. Potter, it came up constantly as a reminder in the conversion but this treaty was focused on the international trade aspects. That is as far as we felt we could go.

Mr. POTTER. Presumably if there were an international problem of habitat protection that could be resolved by bilateral or multilateral treaties between the countries involved.

Mr. HERTER. I think this is true. Another convention that will be before the Senate for ratification is the so-called World Heritage Trust which we acceded to at UNESCO. Ambassador Coerr was present at the time. This treaty does permit the setting aside of unique areas, whether they be cultural, historical or involve parcels of land of ecological concern—natural areas—and there is a mechanism to set aside certain areas of the world for this purpose.

Mr. POTTER. You mentioned the fact that Maurice Strong's organization would be the organization charged with administering the treaty.

Have there been any estimates of what the cost of this program would be?

Mr. HERTER. There were none brought out in the debate but the IUCN felt they could make a reasonable approximation. The United

Nationals Secretariat would arrange for a secretariat. It would be a question of administering the treaty. There are a number of duties spelled out in the convention for the secretariat. I would make an off the top of the head guess, but perhaps one-half million or a quarter of a million for secretariat duties and that is not a very informed estimate.

Mr. POTTER. I suspect it is one of those things that will be worked out at the time. You do not really know?

Mr. HERTER. This is correct.

Mr. POTTER. As you are aware, the Marine Mammal Protection Act required the convening of an international ministerial meeting to consider a proposed convention for the protection of marine ecosystems and marine mammals. What steps are being taken to carry out this directive?

Ambassador COERR. First, I should say that the agencies have already been in consultation on this question, and that we are now making preparations leading to the convening of such a meeting.

Before any such meeting is convened, however, a number of steps must first be taken: We must develop our position within the executive branch of the Government on the issues involved, and on the relationship of any such convention to existing international agreements affecting marine mammals. These would include the International Whaling Convention, the Alaska Fur Seal Convention, this convention and others. As host government we would also have to circulate a working paper to other governments some months in advance of the conference.

Without any question, our immediate concern must be to do everything that we can to see that the objectives of the Marine Mammal Protection Act are met within the context of the existing International Whaling Convention, the next meeting of which is scheduled to take place in June. It will also be necessary for the next few months to work very hard to encourage accessions to and ratifications of the convention which we have been discussing here today. I say this with no intent of pushing the marine mammal convention problem to the back of the stove, and I can assure you that we will pursue the subject with vigor.

Mr. POTTER. That is all I have, Mr. Chairman.

Mr. DINGELL. Mr. Rountree?

Mr. ROUNTREE. I have one question if I may, Mr. Chairman, I remember in the Ocean Dumping Convention and to a great extent in our own Domestic Marine Mammal Act we had somewhat of a problem both in London and here in the United States in relation to the scientific aspects of the convention.

Where in the convention do you have this mechanism for scientific determination and updating of the listing of a species as endangered?

Mr. HERTER. To answer your question there are mentioned throughout the treaty what are called "scientific authorities" and "management authorities," particularly in connection with export permits on appendix I and appendix II species; in fact, with all appendix species there has to be a certification by the scientific authorities of the exportive state that the export is not going to further endanger the species.

We also have fairly elaborate amendment procedures adding and withdrawing species from this list and presumably all countries have a chance to object. This would be done through the scientific authorities in particular countries.

This is fully spelled out, sir. I am just trying to find it.

Mr. ROUNTREE. Articles 5, 15, 16?

Mr. HERTER. That is right, article 15, amendments to appendixes.

Mr. ROUNTREE. I notice in subparagraph 2 or section 2 of article 16 on page 24 that if a state enters a reservation with respect to a species that particular state, for purposes of the convention, is treated as not a party to the convention for that species concerned.

In the case of a particular fact situation where you have the United States having on its domestic endangered list a species that they submitted for inclusion in the convention and the party or the state were asked if that species is resident or domiciled it does not particularly agree with our conclusion this does not necessarily preclude the United States from refusing import or export through the international trade aspects through or out of the United States, is that so?

Mr. HERTER. No, no, the United States would treat this particular species as it would treat any endangered species and it would unless there were objection normally received by other governments, expect the application of the convention to that species.

This is one of our major areas of concern, the problem of sovereignty and so that is why this provision is in here. It does permit a country that wishes to object to refrain from dealing with a specimen or species put on an appendix III.

This is where one nation wants a domestic species considered endangered for the purposes of international trade.

Mr. ROUNTREE. If there is a dispute as to whether or not a species should go on or off a list, do we fall into the arbitration procedures or on a higher plane of sovereignty do we respect that state's wishes; that the particular species is left off the list accordingly?

Mr. HERTER. Perhaps I could ask Ambassador Coerr to speak to the niceties of this provision.

Ambassador COERR. Speaking very generally if there is no objection the amendment goes through and the species is established on the list for that particular country.

If there is an objection, then there is the next step, a provision for what they call active voting whereby a certain percentage of the participating States have to approve it in order to have it on the list.

Is that fails and if the matter is still open at the time of the next conference of States, it will be taken up at that particular conference.

Mr. ROUNTREE. Is this a point we would be considering in our domestic legislation, presumably the amendments that would come up from State, Commerce, and Interior?

Ambassador COERR. I think we would consider it only in terms of the treaty itself and that is the procedure for amending and at the same time assuring flexibility in taking care of sovereignty within the treaty.

As far as our own law is concerned, the treaty specifically says that nothing in the treaty shall prevent a nation from taking more stringent measures.

Mr. ROUNTREE. Thank you, Mr. Chairman.

Mr. DINGELL. Mr. Breaux has another question.

Mr. BREAU. Mr. Secretary, I would like to direct our attention back to my alligators again, if I may.

Suppose the Department of the Interior and the State of Louisiana determined the alligator is not an endangered species. Does this treaty prevent exportation of alligator hides for commercial purposes since it is on this list as an endangered species?

Mr. HERTER. Let me try and answer that accurately. All this treaty does is to control the export of endangered species. Certain findings have to be made by the so-called scientific authority, et cetera, prior to the export of an endangered species.

In the example you suggest if it so develops that the southern alligator is no longer endangered, I would assume the United States would move to take it off the endangered species list. It is on it now.

Ambassador COERR. Meanwhile, if the scientific authority and management authority approved export licenses could be issued.

Mr. BREAU. That is not for commercial purposes; that is not on appendix I.

Ambassador COERR. On appendix II only.

Mr. HERTER. That is correct, sir, so that I think the next move that would have to be made, Congressman, would be to move this particular species either from appendix I to appendix II or off the list entirely.

Mr. BREAU. Now, this would have to be done by the Department of the Interior, this particular State involved here in the United States?

Mr. HERTER. Well, this would obviously have to be done since the Department of the Interior has the responsibility for administering the Endangered Species Act domestically. This would have to be done in cooperation with the State concerned.

Mr. BREAU. What really puzzles me is the alligator in my State is not on the endangered species list any longer, although it is in this treaty.

I guess the final question is who determines whether it is an endangered species or not.

Mr. DINGELL. I think this is a question we will go into when we have Interior and the management agencies before us.

The Chair does note the alligator has made a return in the State of Louisiana. This matter will be discussed with Interior at the appropriate time.

Mr. BREAU. That was something I wanted to bring out. Thank you, Mr. Chairman.

Mr. DINGELL. Mr. Ruppe?

Mr. RUPPE. No questions.

Mr. DINGELL. Mr. Herter, I assume that we will be presented with the administration's views with regard to implementation of the different provisions of the convention.

Again referring back to our earlier discussion indicating this committee does at a very early time intend to commence work on this particular matter.

You have indicated that it is the intention of the administration to submit this matter to the Senate for ratification at an early time. Mr. Secretary, I assume also that we will have appropriate suggestions for internal legislation to implement the treaty with regard to this Nation and I would be correct in assuming that there would be a mechanism whereby the legislation in this country could be submitted to the secretariat or whoever is the custodial body for the convention so that our

actions could be available to the other signatory parties so they can see what we have done in this regard?

Mr. HERTER. Yes, sir. The treaty specifically requests that copies of domestic legislation be submitted to the secretariat.

Mr. DINGELL. That would be helpful and I think it would be useful all around.

It has always been generally assumed in our discussions that the Management Authority inside this country would be Interior with regard to endangered species legislation, but it is my recollection that some of the marine species, whales, and dolphins, and so forth will fall under the Department of Commerce. I assume this question has not yet been resolved, but I guess we should anticipate we are going to have to face the question of who will be the management agent with regard to plants and flora. Is that correct?

Mr. HERTER. That is correct, sir.

Mr. DINGELL. Has any judgment been made yet, Mr. Herter, with regard to that point?

Mr. HERTER. Not that I am aware of. So far as plants are concerned, it is probably the Department of Agriculture.

Mr. DINGELL. I was assuming that was so. I know that the Department of Agriculture was unhappy with the legislation that the committee had before it with regard to endangered species of plants and it indicated informally to the committee that they wanted the reference to plants, et cetera, out of that endangered species legislation, a suggestion that was not enthusiastically greeted up here, as you might imagine.

Mr. HERTER. What the treaty does provide (and we had a considerable discussion about this) is that a country can designate as many management authorities as it wishes, but for the purposes of communications from other countries and from the secretariat there is one authority. One management authority will be designated so that another country or the secretariat does not have to make up its mind well, who in the United States do we report this particular thing to, whom do we communicate with.

A number of countries insisted that there be only one point of notification even though internally there might be several departments that would be, in fact, the management authority for a particular portion of the treaty.

Mr. DINGELL. That makes very good sense. Now, is it possible, for example, that within Mr. Breaux' State of Louisiana that a management authority might be the State game agency for some kind of cooperative agreement?

Would that be possible under the treaty or are you able to comment on that point?

Mr. HERTER. I think the answer to that is yes, provided there is a Federal point of communication, and this is agreeable with the Federal Government. There is no reason why in the world it cannot be done.

In South Africa, for example, there is no Federal authority in this area at the present time, that is no Federal agency that deals with the endangered species. It is dealt with entirely on a provincial basis and in their case, their point of contact would be the Ministry of Foreign Affairs.

Mr. DINGELL. I imagine these are matters that will require further discussion and consideration and amplification as we consider this treaty.

Did you have any further comment you would want to make at this point?

Mr. HERTER. No. I think Ambassador Coerr wanted to make a comment with respect to the alligator.

Would you speak to this, Wymb?

Ambassador COERR. I think it would be most difficult probably if there were any question of endangerment for there to be any trade whatsoever because these are four very tight procedures.

Mr. BREAUX. Actually, I think the problem will not come up because the sale of alligator hides is basically domestic, within the continental United States and we will not get into the problem of having to export.

Mr. DINGELL. Mr. Ruppe?

Mr. RUPPE. Thank you, Mr. Chairman.

I have just one question. Does trade mean movement simply by sea and not trade nation to nation between adjacent countries?

Mr. HERTER. No, sir, it means any kind of trade. This is found, Mr. Congressman, on page 2 under article 1, means export, reexport, import, and introduction from the sea.

Mr. RUPPE. It means any import or exportation without necessarily sea passage or sea transportation being involved?

Mr. HERTER. Precisely; trade between adjacent countries is included.

Mr. RUPPE. Thank you, Mr. Chairman.

Mr. DINGELL. Mr. Herter, we thank you again, and also you, Mr. Ambassador Coerr for your presence and for a very fine job.

If there is no further business to come before the committee at this time, we will stand adjourned, until the call of the Chair.

[Whereupon, at 11:10 a.m., the subcommittee adjourned, subject to the call of the Chair.]

ENDANGERED SPECIES

MONDAY, MARCH 26, 1973

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON FISHERIES AND WILDLIFE
CONSERVATION AND THE ENVIRONMENT, OF THE
COMMITTEE ON MERCHANT MARINE AND FISHERIES,
Washington, D.C.

The subcommittee met at 10 a.m., in room 1334, Longworth Office Building, Hon. John D. Dingell (chairman of the subcommittee) presiding.

Mr. DINGELL. The subcommittee will please come to order.

This morning the subcommittee opens hearings on a number of bills designed to improve our ability to protect and conserve endangered species of fish and wildlife.

The proposed bills build on the foundation established by this committee in 1966 and 1969, when the first steps were taken to halt the accelerating decline of many species of fish and wildlife.

The bills before us today have a number of common features; they all widen substantially the reach of U.S. protective legislation by allowing that protection to be imposed before the species are actually brought to the brink of extinction, and they provide means by which populations of animals may be similarly protected.

H.R. 37 and a number of identical bills were drawn up as a response to last year's administration proposal. They further extend the legislation in a number of regards, and I expect that the discussions today will develop these differences in detail.

H.R. 4758, this year's administration bill, appears in all respects to be an improvement over last year's bill, and I commend you for a good job in clarifying a fairly obscure picture for us, Mr. Secretary.

There is another piece of legislation before us today which I think also deserves careful analysis. The Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere was signed in 1940, and provides a number of measures for the protection of parks, birds, other animalise and species of flora. It has been signed by 15 nations, including this country, but implementing legislation has never been proposed in the United States.

Our colleague, Mr. Roybal, has proposed legislation which would accomplish this, and since it is so closely allied in concept with this legislation, we propose to consider his bill at this time as well.

Also, as I am sure everyone here is aware, negotiations have recently and successfully been completed for an international convention for the protection of endangered species of flora and fauna.)

That convention, signed early this month by the United States, goes further in several respects than any of the bills before us. It is my hope that we will be able to devise, in the course of these hearings, mechanisms which will have the effect of incorporating into the United States legislative framework all the substantive requirements of the convention, and I seek the assistance of our witnesses today to that end.

One major area in which the existing laws and proposed bills are inadequate has to do with the question of protecting plans and trees which may be endangered.

The Administration proposals have been consistently silent on the subject, and H.R. 37 requires only that the problem be studied by the Smithsonian Institution. I would hope that we can do better.

The questions before us today are complex and they are challenging. We look forward with interest to the contributions which the witnesses who are to appear before us can make.

Let the bills to be considered, and any departmental reports pertaining to the legislation appear at this point in the record.

[The bills and agency reports follow:]

93^d CONGRESS
1st SESSION

**H.R. 37, H.R. 470, H.R. 471,
H.R. 1511, H.R. 2669, H.R. 3310,
H.R. 3696, H.R. 3795**

BILLS

To provide for the conservation, protection, and propagation of species or subspecies of fish and wildlife that are threatened with extinction or likely within the foreseeable future to become threatened with extinction, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That this Act may be cited as the “Endangered Species
4 Conservation Act of 1973”.)

5 FINDINGS, PURPOSES, AND POLICY

6 SEC. 2. (a) The Congress finds and declares that one

1 of the unfortunate consequences of growth and development
2 in the United States and elsewhere has been the extermina-
3 tion of some species or subspecies of fish and wildlife; that
4 serious losses in species of wild animals with educational,
5 historical, recreational, and scientific value have occurred
6 and are occurring; that the United States has pledged it-
7 self, pursuant to migratory bird treaties with Canada and
8 Mexico, the Migratory and Endangered Bird Treaty with
9 Japan, the Convention on Nature Protection and Wildlife
10 Preservation in the Western Hemisphere, the International
11 Convention for the Northwest Atlantic Fisheries, the Inter-
12 national Convention for the High Seas Fisheries of the
13 North Pacific Ocean, and other international agreements,
14 to conserve and protect, where practicable, the various
15 species of fish and wildlife that are threatened with extinc-
16 tion; and that the conservation, protection, restoration, or
17 propagation of such species will inure to the benefit of all
18 citizens.

19 (b) The purposes of this Act are to provide a program
20 for the conservation, protection, restoration, or propagation
21 of species and subspecies of fish and wildlife that are threat-
22 ened with extinction, or are likely within the foreseeable
23 future to become threatened with extinction.

24 (c) It is further declared to be the policy of Congress

1 that all Federal departments and agencies shall seek to pro-
2 tect species or subspecies of fish and wildlife that are threat-
3 ened with extinction or are likely within the foreseeable
4 future to become threatened with extinction, and, wherever
5 practicable, shall utilize their authorities in furtherance of
6 the purpose of this Act.

7 DEFINITIONS

8 SEC. 3. For the purposes of this Act—

9 (1) The term “Federal lands” means all lands or
10 interests therein over which Congress has legislative au-
11 thority under article IV, section 3, clause 2 of the
12 United States Constitution, including, without limitation,
13 lands enumerated in section 1400 of title 43, United
14 States Code.

15 (2) The term “fish” means any fish or any part,
16 products, egg, or offspring thereof, or the dead body or
17 parts thereof.

18 (3) The term “import” means to bring into the
19 territorial limits of the United States and includes, with-
20 out limitation, entry into a foreign trade zone, and trans-
21 shipment through any portion of the United States
22 without customs entry.

23 (4) The term “person” means (A) any private
24 person or entity, and (B) any officer, employee, agent,

1 department, or instrumentality of the Federal Govern-
2 ment, of any State or political subdivision thereof, or of
3 any foreign government.

4 (5) The term "Secretary" means the Secretary of
5 the Interior and the Secretary of Commerce with re-
6 spect to functions and responsibilities under this Act
7 relating to fish and wildlife, consistent with such
8 program responsibilities therefor as are vested pursuant
9 to the provisions of Reorganization Plan Numbered 4 of
10 1970.

11 (6) The term "take" means (A) with respect to
12 fish or wildlife, to threaten, harass, hunt, capture, or kill,
13 or attempt to threaten, harass, hunt, capture, or kill; and
14 (B) with respect to flora, to collect, sever, remove, or
15 otherwise damage in any manner, or to attempt to collect,
16 sever, remove, or otherwise damage in any manner.

17 (7) The term "United States" includes the sev-
18 eral States, the District of Columbia, the Commonwealth
19 of Puerto Rico, the Canal Zone, the possessions of the
20 United States, and the Trust Territory of the Pacific
21 Islands.

22 (8) The term "wildlife" means any wild mammal,
23 game or nongame migratory bird, wild bird, amphibian,
24 reptile, mollusk, crustacean, or other animal, or any part,

1 products, egg, or offspring thereof, or the dead body or
2 parts thereof, including migratory, nonmigratory and
3 endangered birds for which protection is also afforded
4 by treaty or other international agreement.

5 { DETERMINATION OF ENDANGERED SPECIES

6 SEC. 4. (a) A species or subspecies of fish or wildlife
7 shall be regarded as an endangered species whenever the
8 Secretary by regulation determines, based on the best scien-
9 tific and commercial data available to him and after consulta-
10 tion, as appropriate, with the affected States, and, in coopera-
11 tion with the Secretary of State, the country or countries in
12 which such fish and wildlife are normally found or whose
13 citizens harvest the same on the high seas, and with inter-
14 ested persons and organizations, and other interested Federal
15 agencies, that the continued existence of such species or sub-
16 species of fish or wildlife throughout all or a significant por-
17 tion of its habitat or range, is either presently threatened
18 with extinction or will likely within the foreseeable future
19 become threatened with extinction, due to any of the follow-
20 ing factors:

- 21 (1) the present or threatened destruction, modifica-
22 tion, or curtailment of its habitat or range;
23 (2) overutilization for commercial, sporting, sci-
24 entific, or educational purposes;

1 (3) disease or predation;

2 (4) the inadequacy of existing regulatory mecha-
3 nisms; or

4 (5) other natural or manmade factors affecting its
5 continued existence.

6 (b) The Secretary shall publish in the Federal Register
7 not less than annually a list, by scientific and common name
8 or names, species or subspecies determined, pursuant to this
9 section, to be endangered, indicating as to each species or
10 subspecies so listed whether such species or subspecies is
11 threatened with extinction or is likely within the foreseeable
12 future to become threatened with extinction and, in either
13 case, over what portion of the range of such species or sub-
14 species this condition exists. The Secretary may, from time
15 to time, by regulation revise any such list. The endangered
16 species lists which are effective as of the date of the enact-
17 ment of this Act shall be republished to conform to the pro-
18 visions of this Act, except that until such republication
19 nothing herein shall be deemed to invalidate such endan-
20 gered species lists. The provisions of section 553 of title
21 5, United States Code, shall apply to any regulation issued
22 under this subsection. The Secretary shall, upon the petition
23 of an interested person under subsection 553 (e) of title 5,
24 United States Code, also conduct a review, on the record
25 after opportunity for agency hearing, of any listed or unlisted

1 species or subspecies of fish or wildlife proposed to be re-
2 moved from or added to the list, but only if he finds and
3 publishes his finding that such person has presented sub-
4 stantial evidence to warrant such a review.

5 (LAND ACQUISITION AND AGENCY COMPLIANCE

6 SEC. 5. (a) The Secretary shall utilize the land ac-
7 quisition and other authorities of the Migratory Bird Con-
8 servation Act, as amended, the Fish and Wildlife Act of
9 1956, as amended, and the Fish and Wildlife Coordination
10 Act, as appropriate, to carry out a program in the United
11 States of conserving, protecting, restoring, or propagating
12 those species and subspecies of fish and wildlife that he lists
13 as endangered species pursuant to section 4 of this Act.

14 (b) In addition to the land acquisition authorities other-
15 wise available to him, the Secretary is hereby authorized to
16 acquire by purchase, donation, or otherwise, lands or inter-
17 ests therein needed to carry out the purposes of this Act re-
18 lating to the conservation, protection, restoration, or propa-
19 gation of those species or subspecies of fish and wildlife that
20 he lists as endangered species pursuant to section 4 of this
21 Act.

22 (c) Funds made available pursuant to the Land and
23 Water Conservation Fund Act of 1965 as amended may
24 be used for the purpose of acquiring lands, waters, or inter-
25 ests therein pursuant to this section that are needed for

1 the purpose of conserving, protecting, restoring, or propa-
2 gating those species or subspecies of fish and wildlife, that
3 he lists as endangered species pursuant to section 4 of this
4 Act.

5 (d) The Secretary shall review other programs admin-
6 istered by him and, to the extent practicable, utilize such
7 programs in furtherance of the purposes of this Act. All other
8 Federal departments and agencies shall, in consultation with
9 and with the assistance of the Secretary, utilize, wherever
10 practicable, their authorities in furtherance of the purposes
11 of this Act by carrying out programs for the protection
12 of endangered species and by taking such actions as may
13 be necessary to insure that actions authorized, funded, regu-
14 lated, or administered by them do not jeopardize the contin-
15 ued existence of endangered species or result in destruction or
16 modification of critical habitat of such species.

17 (e) Subject to the provisions of section 1415 of the
18 Supplemental Appropriation Act, 1953 (31 U.S.C. 724),
19 the President is authorized, as a demonstration of the com-
20 mitment of the United States to the worldwide protection of
21 endangered species of fish and wildlife, to use foreign cur-
22 rencies accruing to the United States Government under
23 the Agricultural Trade Development and Assistance Act of
24 1954 or any other law to provide to any foreign country
25 (with its consent) assistance in the development and man-

1 agement of programs in that country which the Secretary
2 determines to be necessary or useful for the conservation,
3 protection, restoration, or propagation of any species or
4 subspecies of fish and wildlife listed by the Secretary pursuant
5 to section 4 of this Act. The President shall provide assist-
6 ance (which includes, but is not limited to, the acquisition,
7 by lease or otherwise, of lands, waters, or interests therein)
8 to foreign countries under this section under such terms and
9 conditions as he deems appropriate.

10 (f) In carrying out the provisions of this Act, the Sec-
11 retary, through the Secretary of State, shall encourage
12 foreign countries to provide protection to endangered species
13 or subspecies of fish or wildlife, to take measures to prevent
14 any fish or wildlife from becoming endangered, and he shall,
15 through the Secretary of State, encourage bilateral and
16 multilateral agreements with such countries for the con-
17 servation and propagation of fish and wildlife. The
18 Secretary is authorized to assign or otherwise make available
19 any officer or employee of his department for the purpose of
20 cooperating with foreign countries and international organi-
21 zations in developing personnel resources and programs
22 which promote conservation of fish or wildlife, including (1)
23 educational training of United States and foreign personnel,
24 here or abroad, in the subjects of fish and wildlife manage-
25 ment, research, and law enforcement; and (2) rendering

1 professional assistance abroad in such matters. The Secre-
2 tary is also authorized to conduct or cause to be conducted
3 such law enforcement investigations and research abroad as
4 he deems necessary to carry out the obligations imposed
5 upon him by this Act.

6 COOPERATION WITH THE STATES

7 SEC. 6. (a) In carrying out the program authorized
8 by this Act, the Secretary shall cooperate to the maximum
9 extent practicable with the several States. Such cooperation
10 shall include consultation before the acquisition of any land
11 for the purpose of conserving, protecting, restoring, or prop-
12 agating any endangered species.

13 (b) The Secretary may enter into agreements with the
14 States for the administration and management of any area
15 established for the conservation, protection, restoration, or
16 propagation of endangered species. Any revenues derived
17 from the administration of such areas under these agree-
18 ments shall be subject to the provisions of section 401 of
19 the Act of June 15, 1935 (49 Stat. 383), as amended (16
20 U.S.C. 715s).

21 (c) The Secretary may delegate to a State the authority
22 to regulate the taking by any person of endangered species or
23 subspecies of resident fish and wildlife when he determines
24 that such State maintains an adequate and active program,

1 consistent with the policies and purposes of this Act, to man-
2 age and protect such endangered species in accordance with
3 criteria issued by the Secretary.

4 (d) Any action taken by the Secretary under this section
5 shall be subject to his periodic and continual review at no
6 greater than annual intervals. Such review shall include the
7 consideration of comment received from interested persons.

8 (e) Nothing in this Act, or any amendment made by
9 this Act, shall be construed as superseding or limiting the
10 power of any State to enact legislation more restrictive than
11 the provisions of this Act for the protection and conservation
12 of fish and wildlife, including the regulation or prohibition of
13 the retail sale of specimens or of products processed or manu-
14 factured from the specimens of fish and wildlife, whether
15 such specimens are alive or dead.

16 (f) The Secretary of the Interior shall promptly under-
17 take an investigation and study regarding the functions and
18 responsibilities which the States should have with respect to
19 the management and protection of endangered species of fish
20 and wildlife. The Secretary of the Interior shall report the
21 results of the investigation and study to Congress within one
22 year after the date of the enactment of this Act, and such
23 report may include such recommendations as he may have
24 regarding the extent to, and manner in, which the Federal

1 Government should assist the States in establishing and im-
2 plementing management and protection programs for en-
3 dangered species.

4

PROHIBITED ACTS

5 SEC. 7. (a) Notwithstanding any other Act of Congress
6 or regulation issued pursuant thereto, and except as other-
7 wise provided in section 8 of this Act, any person who—

8 (A) imports into or exports from the United
9 States, receives, or causes to be so imported, received,
10 or exported; or

11 (B) takes or causes to be taken within the United
12 States, the territorial sea of the United States, Federal
13 lands, or upon the high seas; or

14 (C) ships, carries, or receives by any means in
15 interstate commerce

16 any species or subspecies of fish or wildlife which the Sec-
17 retary has listed as an endangered species threatened with
18 extinction pursuant to section 4 of this Act shall be punished
19 in accordance with the provisions of section 9 of this Act.

20 (b) Whenever the Secretary, pursuant to section 4 of
21 this Act, lists a species or subspecies as an endangered species
22 which is likely within the foreseeable future to become
23 threatened with extinction, he shall issue such regulations
24 as he deems necessary or advisable to provide for the con-
25 servation, protection, restoration, or propagation of such

1 species or subspecies, including regulations subjecting to
2 punishment in accordance with section 9 of this Act any
3 person who—

4 (1) imports into or exports from the United States,
5 receives, or causes to be so imported, received, or ex-
6 ported; or

7 (2) takes or causes to be taken within the United
8 States, the territorial sea of the United States, Federal
9 lands, or upon the high seas; or

10 (3) ships, carries, or receives by any means in
11 interstate commerce

12 any such species or subspecies of fish or wildlife likely
13 within the foreseeable future to become threatened with
14 extinction.

15 (c) For the purpose of facilitating enforcement of this
16 Act, the Secretary may from time to time, by regulation, ex-
17 tend the protection of this section, to the extent he deems it
18 advisable, to any species or subspecies of fish or wildlife
19 which is not listed as an endangered species, but which so
20 closely resembles in appearance, at the point in question,
21 a species or subspecies of fish or wildlife which has been
22 listed as endangered, that substantial difficulty is posed to
23 enforcement personnel in attempting to differentiate between
24 the endangered and nonendangered species or subspecies of

1 fish or wildlife, and this difficulty poses an additional threat
2 to the endangered species or subspecies.

3 EXCEPTIONS

4 SEC. 8. (a) The Secretary may permit, under such
5 terms and conditions as he may prescribe, the importation,
6 taking, or the transportation in interstate commerce of any
7 species or subspecies of fish or wildlife listed as an en-
8 dangered species threatened with extinction for scientific
9 purposes, and for the propagation of such fish and wildlife
10 in captivity for preservation purposes, but only if he finds
11 that such importation, exportation, taking, transportation in
12 interstate commerce, or projected use will not adversely af-
13 fect the regenerative capacity of such specimen or of such
14 species or subspecies in a significant portion of its range or
15 habitat or otherwise affect the survival of the wild population
16 of such species.

17 (b) In order to minimize undue economic hardship to
18 any person importing, exporting, taking, or transporting in
19 interstate commerce any species or subspecies of fish or
20 wildlife which is listed as an endangered species pursuant
21 to section 4 of this Act under any contract entered into prior
22 to the date of original publication of such listing in the Fed-
23 eral Register, the Secretary, upon such person filing an
24 application with him and upon filing such information as
25 the Secretary may require showing, to his satisfaction, such

1 hardship, may permit such person to import, export, take
2 or transport such species or subspecies in such quantities and
3 for such periods, not to exceed one year, as he determines to
4 be appropriate.

5 PENALTIES AND ENFORCEMENT

6 SEC. 9. (a) (1) Any person who violates any provi-
7 sion of this Act or of any regulation or permit issued there-
8 under, other than a person who commits a violation the
9 penalty for which is prescribed by subsection (b) of this
10 section, shall be assessed a civil penalty by the Secretary
11 of not more than \$10,000 for each such violation. No
12 penalty shall be assessed unless such person is given notice
13 and opportunity for a hearing with respect to such viola-
14 tion. Each violation shall be a separate offense. Any such
15 civil penalty may be compromised by the Secretary. Upon
16 any failure to pay the penalty assessed under this para-
17 graph, the Secretary may request the Attorney General
18 to institute a civil action in a district court of the United
19 States for any district in which such person is found or
20 resides or transacts business to collect the penalty, and
21 such court shall have jurisdiction to hear and decide any
22 such action. In the case of Guam such actions may be
23 brought in the district court of Guam; in the case of the
24 Virgin Islands such actions may be brought in the district
25 court of the Virgin Islands, and in the case of American

1 Samoa such actions may be brought in the District Court
2 of the United States for the District of Hawaii and such
3 courts shall have jurisdiction of such actions. In hearing
4 such action, the court shall sustain the Secretary's action
5 if such action is supported by substantial evidence.

6 (2) Whenever any property is seized pursuant to sub-
7 section (c) of this section, the Secretary shall move to dis-
8 pose of the civil penalty proceedings pursuant to paragraph
9 (1) of this subsection as expeditiously as possible. Upon
10 the assessment and collection of a civil penalty pursuant to
11 paragraph (1) of this subsection, any property so seized
12 may be proceeded against in any court of competent
13 jurisdiction and forfeited. Fish or wildlife so forfeited
14 shall be conveyed to the Secretary for disposition by him
15 in such a manner as he deems appropriate. If, with respect
16 to any such property so seized, no compromise forfeiture
17 has been achieved or no action is commenced to obtain the
18 forfeiture of such fish, wildlife, property, or item within
19 thirty days following the completion of proceedings involv-
20 ing an assessment and collection of a civil penalty, such
21 property shall be immediately returned to the owner or the
22 consignee in accordance with regulations promulgated by
23 the Secretary.

24 (3) Proceedings for the assessment of civil penalties
25 pursuant to paragraph (1) of this subsection shall be con-

1 ducted in accordance with section 554 of title 5. The Secre-
2 tary may issue subpoenas for the attendance and testimony
3 of witnesses and the production of relevant papers, books,
4 and documents, and administer oaths. Witnesses summoned
5 shall be paid the same fees and mileage that are paid wit-
6 nesses in the courts of the United States. In case of con-
7 tumacy or refusal to obey a subpoena served upon any per-
8 son pursuant to this paragraph, the district court of the
9 United States for any district in which such person is found
10 or resides or transacts business, upon application by the
11 United States and after notice to such person, shall have
12 jurisdiction to issue an order requiring such person to ap-
13 pear and give testimony before the Secretary or to appear
14 and produce documents before the Secretary, or both, and
15 any failure to obey such order of the court may be punished
16 by such court as a contempt thereof.

17 (b) Any person who knowingly violates any provision
18 of this Act, or of any regulation or permit issued there-
19 under, shall, upon conviction, be fined not more than \$20,-
20 000 or imprisoned for not more than one year, or both, and
21 any Federal hunting or fishing licenses, permits, or stamps
22 may be revoked or withheld for a period of up to five years.
23 Upon conviction, (1) any fish or wildlife seized shall be for-
24 feited to the Secretary for disposal by him in such manner as
25 he deems appropriate, and (2) any other property seized

1 pursuant to subsection (c) of this section may, in the dis-
2 cretion of the court, commissioner, or magistrate, be forfeited
3 to the United States or otherwise disposed of. If no convic-
4 tion results from any such alleged violation, such property
5 so seized in connection therewith shall be immediately re-
6 turned to the owner or consignee in accordance with regula-
7 tions promulgated by the Secretary, unless the Secretary,
8 within thirty days following the final disposition of the case
9 involving such violation, commences proceedings under sub-
10 section (a) of this section.

11 (c) (1) The provisions of sections 7 and 8 of this
12 Act and any regulations or permits issued pursuant thereto,
13 or pursuant to subsection (d) or (e) of this section, shall be
14 enforced by the Secretary, the Secretary of the Treasury,
15 or the Secretary of the Department in which the Coast
16 Guard is operating, or all such Secretaries. Each such Sec-
17 retary may utilize, by agreement, with or without reimburse-
18 ment, the personnel, services, and facilities of any other
19 Federal agency or any State agency.

20 (2) Any authorized agent of the Department of the
21 Interior, the Department of Commerce, or the Department
22 of the Treasury may, with or without a warrant, arrest any
23 person who such agent has probable cause to believe is
24 knowingly violating this Act, in his presence or view, or any
25 regulation or permit issued thereunder, the penalty for which

1 is provided under subsection (b) of this section. An agent
2 who has made an arrest of a person in connection with any
3 such violation may search such person at the time of his
4 arrest and seize any property taken, used, or possessed in
5 connection with any such violation.

6 (3) Any authorized agent of the Department of the
7 Interior, the Department of Commerce, or the Department
8 of the Treasury shall have authority to search and seize with
9 or without a warrant, as provided by the customs laws and by
10 the law relating to search and seizure. Any such officer or
11 agent is authorized to execute warrants to search for and
12 seize any property, including, for the purposes of this sec-
13 tion, any fish, wildlife, aircraft, boat, or other conveyance,
14 weapon, business records, shipping documents, or other items
15 which have been taken, used, or possessed in connection
16 with the violation of any section, regulation, or permit with
17 respect to which a civil or criminal penalty may be assessed,
18 pursuant to subsection (a) or (b) of this section. Any prop-
19 erty seized pursuant to this section shall be held by any agent
20 authorized by the Secretary or the Secretary of the Treasury,
21 or by a United States marshal, pending disposition of pro-
22 ceedings under subsection (a) or (b) of this section; except
23 that either Secretary may, in lieu of holding such property,
24 either (1) permit a bond or other satisfactory surety to be
25 posted, or (2) place the fish or wildlife in the custody of

1 such person as he shall designate. Upon the imposition of
2 a civil or criminal penalty, or a forfeiture, the costs to the
3 Government of transfer, board, and handling, including the
4 cost of investigations at a nondesignated port of entry, shall
5 be payable to the account of the Secretary. The owner or
6 consignee of any property so seized shall, as soon as prac-
7 ticable following such seizure, be notified of the fact in
8 accordance with regulations established by the Secretary.

9 (d) The Secretary may request the Attorney General
10 to bring appropriate action to prevent threatened violations
11 of this Act, or of any regulations or orders promulgated
12 pursuant thereto.

13 (e) For the purposes of facilitating the enforcement
14 of this Act and reducing the costs thereof, the Secretary,
15 with the approval of the Secretary of the Treasury, shall,
16 after notice and an opportunity for a public hearing, from
17 time to time designate, by regulation, any port or ports
18 in the United States for the importation of fish and wild-
19 life (other than shellfish and fishery products) into the
20 United States. The importation of such fish or wildlife into
21 any port in the United States, except those so designated,
22 shall be prohibited after the effective date of such designa-
23 tions; except that the Secretary, under such terms and
24 conditions as he may prescribe, may permit importation
25 at nondesignated ports in the interest of the health or

1 safety of the fish or wildlife. Such regulations may provide
2 other exceptions to such prohibition if the Secretary, in
3 his discretion, deems it appropriate and consistent with the
4 purposes of this subsection.

5 (f) The Secretary is authorized to promulgate such
6 regulations as may be appropriate to carry out the purposes
7 of this Act, and the Secretaries of the Treasury and the
8 department in which the Coast Guard is operating are
9 authorized to promulgate such regulations as may be appro-
10 priate to the exercise of responsibilities under subsection
11 (c) (1) of this section.

12 (g) (1) Any person who engages to any extent in busi-
13 ness as an importer of fish and wildlife must register with the
14 Secretary of the Treasury his name and the address of each
15 place of business at which, and all trade names under which,
16 he conducts such business.

17 (2) Any person required to register with the Secretary
18 of the Treasury under paragraph (1) of this subsection
19 shall—

20 (A) keep such records as will fully and correctly
21 disclose each importation of fish and wildlife made by
22 him and the subsequent disposition made by him with
23 respect to such fish and wildlife; and

24 (B) at all reasonable times upon notice by a duly
25 authorized representative of the Secretary, afford such

1 representative access to his places of business an oppor-
2 tunity to examine his inventory of imported fish and
3 wildlife and the records required to be kept under
4 subparagraph (A) of this paragraph, and to copy
5 such records.

6 (3) The Secretary of the Treasury shall prescribe such
7 regulations as are necessary and appropriate to carry out
8 the purposes of this subsection.

9 INTERNATIONAL AND INTERGOVERNMENTAL COOPERATION

10 SEC. 10. (a) (1) In carrying out the provisions of
11 this Act, the Secretary, through the Secretary of State,
12 shall encourage foreign countries to provide protection to
13 endangered species or subspecies of fish and wildlife, to take
14 measures to prevent any fish or wildlife from becoming en-
15 dangered, and shall cooperate with such countries in provid-
16 ing technical assistance in developing and carrying out pro-
17 grams to provide such protection, and shall, through the
18 Secretary of State, encourage bilateral and multilateral agree-
19 ments with such countries for the protection, conservation,
20 or propagation of fish and wildlife. The Secretary shall also
21 encourage persons, taking directly or indirectly fish or wild-
22 life in foreign countries or on the high seas for importation
23 into the United States for commercial or other purposes, to
24 develop and carry out, with such assistance as he may provide
25 under any authority available to him, conservation practices

1 designed to enhance such fish or wildlife and their habitat
2 or range. The Secretary of State, in consultation with the
3 Secretary, shall take appropriate measures to encourage the
4 development of adequate measures, including, if appro-
5 priate, international agreements, to prevent such fish or
6 wildlife from becoming threatened with extinction.

7 (2) To assure the worldwide conservation of endan-
8 gered species and to avoid unnecessary harm to affected
9 United States industries, the Secretary, through the Secre-
10 tary of State, shall seek the convening of an international
11 ministerial meeting on fish and wildlife prior to July 1,
12 1973, and included in the business of that meeting shall be
13 the signing of a binding international convention on the
14 conservation of endangered species.

15 (b) The Secretary of Agriculture and the Secretary
16 shall provide for appropriate coordination of the adminis-
17 tration of this Act and amendments made by this Act, with
18 the administration of the animal quarantine laws (19 U.S.C.
19 1306; 21 U.S.C. 101-105, 111-135b, and 612-614).
20 Nothing in this Act, or any amendment made by this Act,
21 shall be construed as superseding or limiting in any manner
22 the functions of the Secretary of Agriculture under any
23 other law relating to prohibited or restricted importations
24 of animals and other articles and no proceeding or determi-
25 nation under this Act shall preclude any proceeding or be

24

1 considered determinative of any issue of fact or law in any
2 proceeding under any Act administered by the Secretary
3 of Agriculture.

4 (c) Whenever the Secretary determines, pursuant to
5 this Act or any other authority vested in him, that a species
6 or subspecies of fish or wildlife is endangered, the Secretary
7 of Agriculture may use all authorities available to him with
8 respect to research, investigations, conservation, develop-
9 ment, protection, management, and enhancement of fish and
10 wildlife, including, but not limited to, the conservation oper-
11 ations program, watershed protection and flood prevention
12 programs, rural environmental assistance program, Great
13 Plains conservation program, resource conservation and
14 development program, forestry programs, and water bank
15 program, in the protection, control, management, or en-
16 hancement of such species or subspecies. Recognizing the
17 national and international interest in the protection and en-
18 hancement of such species or subspecies, the Secretary of
19 Agriculture is authorized, notwithstanding the provisions of
20 any other law, to bear the full cost, or any lesser amount
21 that he, in consultation with the Secretary, may determine
22 desirable to accomplish the objectives of the Act, of the cost
23 of installing any practice, measure, work of improvement,
24 facility, or other developmental, protective, or management
25 systems on private land, the primary purpose of which is

25

1 for the purpose of enabling the landowner to comply with
2 the regulations, or other recommendations, of the Secretary
3 pertaining to the protection, control, management, or en-
4 hancement of such species or subspecies. The Secretary of
5 Agriculture, in carrying out the purposes of this section,
6 shall utilize his authorities to conduct research and investi-
7 gations into vegetative and structural methods and other
8 methods and practices, measures, works of improvement, and
9 facilities most appropriate or effective in the protection,
10 control, management, or enhancement of such species or
11 subspecies. If determined desirable, the Secretary and the
12 Secretary of Agriculture shall be authorized to jointly carry
13 out research, surveys, and investigations. The Secretary is
14 authorized to transfer to the Secretary of Agriculture such
15 funds as may be necessary to carry out the purposes of this
16 subsection.

17 (d) Nothing in this Act, or any amendment made by
18 this Act, shall be construed as superseding or limiting in
19 any manner the functions and responsibilities of the Secre-
20 tary of the Treasury under the Tariff Act of 1930, as
21 amended, including, without limitation, section 527 of such
22 Act (19 U.S.C. 1527) relating to the importation of wild-
23 life taken, killed, possessed, or exported to the United
24 States in violation of the laws or regulations of a foreign
25 country.

ENDANGERED FLORA

1
2 SEC. 11. The Secretary of the Smithsonian Institution,
3 in conjunction with other affected agencies, is authorized and
4 directed to review (1) species and subspecies of endangered
5 plants, trees, and other flora, and (2) methods of providing
6 adequate protection to such species and subspecies, and to
7 report to Congress, within one year after the date of the
8 enactment of this Act, the results of such review. For the
9 purposes of this section, there is authorized to be appro-
10 priated \$250,000.

CONFORMING AMENDMENTS

11
12 SEC. 12. (a) Subsection 4(c) of the Act of Octo-
13 ber 15, 1966 (80 Stat. 928), as amended (16 U.S.C. 668dd
14 (c)), is further amended by revising the second sentence
15 thereof to read as follows: "With the exception of endangered
16 species listed by the Secretary pursuant to section 4 of the
17 Endangered Species Conservation Act of 1972, nothing in
18 this Act shall be construed to authorize the Secretary to
19 control or regulate hunting or fishing of resident fish and
20 wildlife on lands not within the system."

21 (b) Subsection 10(a) of the Migratory Bird Conser-
22 vation Act (45 Stat. 1224), as amended (16 U.S.C. 715i
23 (a)), is further amended by inserting "or likely within
24 the foreseeable future to become threatened with" between
25 the words "with" and "extinction".

1 (c) Subsection 401 (a) of the Act of June 15, 1935
2 (49 Stat. 383), as amended (16 U.S.C. 715s (a)), is
3 further amended by inserting "or likely within the foresee-
4 able future to become threatened with" between the words
5 "with" and "extinction" in the last sentence thereof.

6 (d) Section 6 (a) (1) of the Land and Water Conserva-
7 tion Fund Act of 1965 (16 U.S.C. 460l-9 (a) (1)) is
8 amended by striking out:

9 "THREATENED SPECIES.—For any national area
10 which may be authorized for the preservation of species
11 of fish or wildlife that are threatened with extinction."
12 and inserting in lieu thereof the following:

13 "ENDANGERED SPECIES.—For lands, waters, or
14 interests therein, the acquisition of which is authorized
15 under section 5 (c) of the Endangered Species Conser-
16 vation Act of 1972, needed for the purpose of conserv-
17 ing, protecting, restoring, or propagating endangered
18 species of fish and wildlife."

19 REPEALS

20 SEC. 13. (a) Sections 1 through 3 of the Act of Octo-
21 ber 15, 1966 (80 Stat. 926, 927), as amended (16 U.S.C.
22 668aa-668cc), are hereby repealed in their entirety.

23 (b) Sections 1 through 6 of the Act of December 5,
24 1969 (83 Stat. 275-279; 16 U.S.C. 668cc-1 through
25 668c-6) are hereby repealed in their entirety.

93^d CONGRESS
1ST SESSION

H.R. 1461, H.R. 4755

BILLS

To provide for the conservation, protection, and propagation of species or subspecies of fish and wildlife that are threatened with extinction or likely within the foreseeable future to become threatened with extinction; and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That this Act may be cited as the "Endangered Species
4 Conservation Act of 1973".

5 SEC. 2. (a) The Congress finds and declares that one
6 of the unfortunate consequences of growth and development
7 in the United States and elsewhere has been the extermina-

1 tion of some species or subspecies of fish and wildlife; that
2 serious losses in other species of wild animals with educa-
3 tional, historical, recreational, and scientific value have oc-
4 curred and are occurring; that the United States has pledged
5 itself, pursuant to migratory bird treaties with Canada and
6 Mexico and the Convention on Nature Protection and Wild-
7 life Preservation in the Western Hemisphere, the Interna-
8 tional Convention for the Northwest Atlantic Fisheries, the
9 International Convention for the High Seas Fisheries of the
10 North Pacific Ocean, and other international agreements, to
11 conserve and protect, where practicable, the various species
12 of fish and wildlife, including game and nongame migratory
13 birds, that are threatened with extinction; and that the con-
14 servation, protection, restoration, and propagation of such
15 species will inure to the benefit of all citizens. The purposes
16 of this Act are to provide a program for the conservation,
17 protection, restoration, and propagation of selected species
18 and subspecies of fish and wildlife, including migratory birds,
19 that are threatened with extinction, or are likely within the
20 foreseeable future to become threatened with extinction.

21 (b) It is further declared to be the policy of Congress
22 that all Federal departments and agencies shall seek to pro-
23 tect species or subspecies of fish and wildlife, including mi-
24 gratory birds, that are threatened with extinction or are
25 likely within the foreseeable future to become threatened

1 with extinction, and, insofar as is practicable and consistent
2 with the primary purposes of such bureaus, agencies, and
3 services, shall utilize their authorities in furtherance of the
4 purpose of this Act.

5 (c) (1) A species or subspecies of fish or wildlife shall
6 be regarded as an endangered species whenever, in his dis-
7 cretion, the Secretary determines, based on the best scien-
8 tific and commercial data available to him and after consul-
9 tation, as appropriate, with the affected States, and, in
10 cooperation with the Secretary of State, the country or
11 countries in which such fish and wildlife are normally found
12 or whose citizens harvest the same on the high seas, and to
13 the extent practicable, with interested persons and organi-
14 zations, and other interested Federal agencies, that the con-
15 tinued existence of such species or subspecies of fish or
16 wildlife, in the judgment of the Secretary, is either presently
17 threatened with extinction or will likely within the foresee-
18 able future become threatened with extinction, throughout
19 all or a significant portion of its range, due to any of the
20 following factors: (i) the destruction, drastic modification,
21 or severe curtailment or the threatened destruction, dras-
22 tic modification, or severe curtailment of its habitat; or
23 (ii) its overutilization for commercial, sporting, scientific,
24 or educational purposes; or (iii) the effect on it of disease
25 or predation; or (iv) the inadequacy of existing regulatory

1 mechanisms; or (v) other natural or man-made factors af-
2 fecting its continued existence.

3 (2) After making such determination, the Secretary
4 shall publish in the Federal Register and from time to time
5 he may revise, by regulation, a list, by scientific and com-
6 mon name or names of such endangered species, indicating
7 as to each species so listed whether such species is threatened
8 with extinction or is likely within the foreseeable future to
9 become threatened with extinction and, in either case, over
10 what portion of the range of such species this condition
11 exists. The endangered species lists which are effective as
12 of the date of enactment shall be republished to conform to
13 the provisions of this Act: *Provided, however,* That until
14 such republication nothing herein shall be deemed to invali-
15 date such endangered species lists. The provisions of section
16 553 of title 5, United States Code, shall apply to any regula-
17 tion issued under this subsection. The Secretary shall, upon
18 the petition of an interested person under subsection 553 (e)
19 of title 5, United States Code, also conduct a review of any
20 listed or unlisted species or subspecies of fish or wildlife pro-
21 posed to be removed from or added to the list, but only when
22 he finds and publishes his finding that, to his satisfaction,
23 such person has presented substantial evidence to warrant
24 such a review.

25 (d) For the purposes of this Act, the term—

1 (1) "fish and/or wildlife" means any wild mammal,
2 fish, wild bird, amphibian, reptile, mollusk or crusta-
3 cean, or any part, products, egg, or offspring thereof,
4 or the dead body or parts thereof;

5 (2) "United States" includes the several States, the
6 District of Columbia, the Commonwealth of Puerto Rico,
7 American Samoa, the Virgin Islands and Guam;

8 (3) "person" means any individual, firm, corpora-
9 tion, association, or partnership subject to the jurisdiction
10 of the United States;

11 (4) "take" means to pursue, hunt, shoot, capture,
12 collect, kill, or attempt to pursue, hunt, shoot, capture,
13 collect or kill;

14 (5) "Secretary" means the Secretary of the Interior
15 or the Secretary of Commerce as program responsibilities
16 are vested pursuant to the provisions of Reorganization
17 Plan Numbered 4 of 1970;

18 (6) "import" includes commerce with a foreign
19 country, entry into a foreign trade zone, and transship-
20 ment through any portion of the United States without
21 customs entry.

22 SEC. 3. (a) The Secretary shall utilize the land acqui-
23 sition and other authorities of the Migratory Bird Conservation
24 Act, as amended, the Fish and Wildlife Act of 1956, as
25 amended, and the Fish and Wildlife Coordination Act, as

1 appropriate, to carry out a program in the United States of
2 conserving, protecting, restoring, and propagating those spe-
3 cies and subspecies of fish and wildlife that he lists as en-
4 dangered species pursuant to section 2 of this Act.

5 (b) In addition to the land acquisition authorities other-
6 wise available to him, the Secretary is hereby authorized to
7 acquire by purchase, donation, or otherwise, lands or inter-
8 ests therein needed to carry out the purpose of this Act relat-
9 ing to the conservation, protection, restoration, and propaga-
10 tion of those species or subspecies of fish and wildlife that he
11 lists as endangered species pursuant to section 2 of this Act.

12 (c) Funds made available pursuant to the Land and Wa-
13 ter Conservation Fund Act of 1965 may be used for the pur-
14 pose of acquiring lands, waters, or interests therein pursuant
15 to this section that are needed for the purpose of conserving,
16 protecting, restoring, and propagating those species or sub-
17 species of fish and wildlife, including migratory birds, that he
18 lists as endangered species pursuant to section 2 of this Act.

19 (d) The Secretary shall review other programs admin-
20 istered by him and, to the extent practicable, utilize such
21 programs in furtherance of the purpose of this Act. All other
22 Federal departments and agencies shall, in consultation with
23 and with the assistance of the Secretary, utilize, where prac-
24 ticable, their authorities in furtherance of the purpose of
25 this Act by carrying out programs for the protection of

1 endangered species and by taking such action as may be
2 necessary to insure that action authorized, funded, or carried
3 out by them do not jeopardize the continued existence of
4 endangered species.

5 SEC. 4. (a) In carrying out the program authorized by
6 this Act, the Secretary shall cooperate to the maximum
7 extent practicable with the several States. Such cooperation
8 shall include consultation before the acquisition of any land
9 for the purpose of conserving, protecting, restoring, or prop-
10 agating any endangered species.

11 (b) The Secretary may enter into agreements with the
12 States for the administration and management of any area
13 established for the conservation, protection, restoration, and
14 propagation of endangered species. Any revenues derived
15 from the administration of such areas under these agree-
16 ments shall be subject to the provisions of section 401 of
17 the Act of June 15, 1935 (49 Stat. 383), as amended (16
18 U.S.C. 715s).

19 SEC. 5. (a) (1) Notwithstanding any other Act of
20 Congress or regulation issued pursuant thereto, and except
21 as hereinafter provided, any person who—

22 (i) imports into or exports from the United States,
23 receives, or causes to be so imported, received, or
24 exported; or

1 (ii) takes or causes to be taken within the United
2 States, the territorial sea of the United States, or upon
3 the high seas; or

4 (iii) ships, carries, or receives by any means in
5 interstate commerce, any species or subspecies of fish or
6 wildlife which the Secretary has listed as an endangered
7 species threatened with extinction pursuant to section 2
8 of this Act, shall be punished in accordance with the
9 provisions of section 7 of this Act.

10 (2) The prohibitions contained in this section shall not
11 apply to American Indians, Aleuts, or Eskimos who take
12 endangered species for their own consumption or ritual pur-
13 poses in accordance with a treaty or pursuant to Executive
14 order or Federal statute.

15 (3) In order to minimize undue economic hardship to
16 any person importing, exporting, taking, or transporting in
17 interstate commerce any species or subspecies of fish or
18 wildlife which is listed as an endangered species threatened
19 with extinction pursuant to section 2 of this Act under any
20 contract entered into prior to the date of original publication
21 of such listing in the Federal Register, the Secretary, upon
22 such person filing an application with him and upon filing
23 such information as the Secretary may require showing, to
24 his satisfaction, such hardship, may permit such person to
25 import, export, take or transport such species or subspecies

1 in such quantities and for such periods, not to exceed one
2 year, as he determines to be appropriate.

3 (b) Whenever the Secretary, pursuant to section 2 of
4 this Act, lists a species or subspecies as an endangered species
5 which is likely within the foreseeable future to become
6 threatened with extinction, he shall issue such regulations
7 as he deems necessary or advisable to provide for the con-
8 servation, protection, restoration, and propagation of such
9 species or subspecies, including regulations subjecting to
10 punishment in accordance with section 7 of this Act any
11 person who—

12 (1) imports into or exports from the United States,
13 receives, or causes to be so imported, received, or ex-
14 ported; or

15 (2) takes or causes to be taken within the United
16 States, the territorial sea of the United States, or upon
17 the high seas; or

18 (3) ships, carries, or receives by any means in
19 interstate commerce, any such species or subspecies of
20 fish or wildlife likely within the foreseeable future to
21 become threatened with extinction.

22 SEC. 6. (a) The Secretary may permit, under such terms
23 and conditions as he may prescribe, the importation, taking,
24 or the transportation in interstate commerce of any species

1 or subspecies of fish or wildlife listed as an endangered species
2 threatened with extinction for zoological, educational, and
3 scientific purposes, and for the propagation of such fish and
4 wildlife in captivity for preservation purposes, but only if he
5 finds that such importation, taking, or transportation in inter-
6 state commerce will not adversely affect the regenerative
7 capacity of such species in a significant portion of its range
8 or otherwise affect the survival of the wild population of such
9 species.

10 (b) The Secretary may, by regulation, delegate to a
11 State the authority to regulate the taking by any person of
12 an endangered species when he determines, in his discretion,
13 that such State maintains an active program to manage and
14 protect such endangered species in accordance with criteria
15 issued by the Secretary.

16 (c) Any action taken by the Secretary under this sec-
17 tion shall be subject to his periodic and continual review at
18 no greater than annual intervals. Such review shall include
19 the consideration of comment received from interested
20 persons.

21 SEC. 7. (a) (1) Any person who violates any provision
22 of section 5 or 6 of this Act or any regulation or permit
23 issued thereunder, or any regulation issued under subsection
24 (d) or (e) of this section, other than a person who commits
25 a violation the penalty for which is prescribed by subsection

1 (b) of this section, shall be assessed a civil penalty by the
2 Secretary of not more than \$5,000 for each such violation.
3 No penalty shall be assessed unless such person is given
4 notice and opportunity for a hearing with respect to such
5 violation. Each violation shall be a separate offense. Any
6 such civil penalty may be compromised by the Secretary.
7 Upon any failure to pay the penalty assessed under this para-
8 graph, the Secretary may request the Attorney General to
9 institute a civil action in a district court of the United States
10 for any district in which such person is found or resides or
11 transacts business to collect the penalty, and such court shall
12 have jurisdiction to hear and decide any such action. In the
13 case of Guam such actions may be brought in the district
14 court of Guam, in the case of the Virgin Islands such actions
15 may be brought in the district court of the Virgin Islands,
16 and in the case of American Samoa such actions may be
17 brought in the District Court of the United States for the
18 district of Hawaii and such courts shall have jurisdiction of
19 such actions. In hearing such action, the court shall sustain
20 the Secretary's action if supported by substantial evidence.

21 (2) Whenever any property is seized pursuant to sub-
22 section (c) of this section, the Secretary shall move to dis-
23 pose of the civil penalty proceedings pursuant to paragraph
24 (1) of this subsection as expeditiously as possible. Upon
25 the assessment of a civil penalty pursuant to paragraph (1)

1 of this subsection, any property so seized may be proceeded
2 against in any court of competent jurisdiction and forfeited.
3 Fish or wildlife so forfeited shall be conveyed to the Secre-
4 tary for disposition by him in such a manner as he deems
5 appropriate. If, with respect to any such property so seized,
6 no compromise forfeiture has been achieved or no action is
7 commenced to obtain the forfeiture of such fish, wildlife,
8 property, or item within thirty days following the comple-
9 tion of proceedings involving an assessment of a civil pen-
10 alty, such property shall be immediately returned to the
11 owner or the consignee in accordance with regulations pro-
12 mulgated by the Secretary.

13 (b) Any person who knowingly violates any provision
14 of section 5 or 6 of this Act, or any regulation or permit
15 issued thereunder, or any regulation issued under subsection
16 (d) or (e) of this section shall, upon conviction, be fined
17 not more than \$10,000 or imprisoned for not more than
18 one year, or both, and any Federal hunting or fishing li-
19 censes, permits, or stamps may be revoked or withheld for
20 a period of up to five years. Upon conviction, (1) any fish
21 or wildlife seized shall be forfeited to the Secretary for dis-
22 posal by him in such manner as he deems appropriate, and
23 (2) any other property seized pursuant to subsection (c)
24 of this section may, in the discretion of the court, commis-
25 sioner, or magistrate, be forfeited to the United States or

1 otherwise disposed of. If no conviction results from any
2 such alleged violation, such property so seized in connection
3 therewith shall be immediately returned to the owner or
4 consignee in accordance with regulations promulgated by
5 the Secretary, unless the Secretary, within thirty days fol-
6 lowing the final disposition of the case involving such viola-
7 tion, commences proceedings under subsection (a) of this
8 section.

9 (c) (1) The provisions of sections 5 and 6 of this Act
10 and any regulations or permits issued pursuant thereto, or
11 pursuant to subsection (d) or (e) of this section, shall be
12 enforced by the Secretary, the Secretary of the Treasury,
13 or the Secretary of the Department in which the Coast
14 Guard is operating, or all such Secretaries. Each such
15 Secretary may utilize, by agreement, with or without re-
16 imbursement, the personnel, services, and facilities of any
17 other Federal agency or any State agency.

18 (2) Any authorized agent of the Department of the
19 Interior, the Department of Commerce, or the Department
20 of the Treasury may, without a warrant, arrest any person
21 who such agent has probable cause to believe is knowingly
22 violating, in his presence or view, section 5 or 6 of this
23 Act, or any regulation or permit issued thereunder, the
24 penalty for which is provided under subsection (b) of
25 this section. An agent who has made an arrest of a person

1 in connection with any such willful violation may search
2 such person at the time of his arrest and seize any property
3 taken, used, or possessed in connection with any such
4 violation.

5 (3) Any authorized agent of the Department of the
6 Interior or the Department of Commerce or officer of the
7 Customs shall have authority to search and seize without a
8 warrant, as provided by the customs laws and by the law
9 relating to search and seizure. Said officer or agent is author-
10 ized to execute warrants to search for and seize any property,
11 including, for the purposes of this section, any fish, wildlife,
12 aircraft, boat, or other conveyance, weapon, business records,
13 shipping documents, or other items which have been taken,
14 used, or possessed in connection with the violation of any
15 section, regulation, or permit with respect to which a civil
16 or criminal penalty may be assessed, pursuant to subsection
17 (a) or (b) of this section. The several judges of the courts
18 established under the laws of the United States and the sev-
19 eral States, and United States magistrates, may, within their
20 respective jurisdictions, upon proper oath and affirmation
21 showing probable cause, issue warrants and subpoenas under
22 the Federal Rules of Criminal Procedure to enforce subsec-
23 tions (a) and (b) of this section. Any property seized pur-
24 suant to this section shall be held by any agent authorized by
25 the Secretary or the Secretary of the Treasury, or by a

1 United States Marshal, pending disposition of proceedings
2 under subsection (a) or (b) of this section; except that
3 either Secretary may, in lieu of holding such property, either
4 (1) permit a bond or other satisfactory surety to be posted,
5 or (2) place the fish or wildlife in the custody of such person
6 as he shall designate. Upon the imposition of a civil or crim-
7 inal penalty, or a forfeiture, the costs to the Government of
8 transfer, board, and handling, including the cost of investiga-
9 tions at a nondesignated port of entry, shall be payable to
10 the account of the Secretary. The owner or consignee of any
11 property so seized shall, as soon as practicable following such
12 seizure, be notified of the fact in accordance with regulations
13 established by the Secretary.

14 (d) For the purposes of facilitating enforcement of sec-
15 tions 5 and 6 of this Act and reducing the costs thereof, the
16 Secretary, with the approval of the Secretary of the Treasury,
17 shall, after notice and an opportunity for a public hearing,
18 from time to time designate, by regulation, any port or ports
19 in the United States for the importation of fish and wildlife,
20 other than shellfish and fishery products imported for com-
21 mercial purposes, into the United States. The importation of
22 such fish or wildlife into any port in the United States, ex-
23 cept those so designated, shall be prohibited after the effective
24 date of such designations; except that the Secretary, under
25 such terms and conditions as he may prescribe, may permit

1 importation at nondesignated ports in the interest of the
2 health or safety of the fish or wildlife. Such regulations may
3 provide other exceptions to such prohibition if the Secretary,
4 in his discretion, deems it appropriate and consistent with the
5 purposes of this subsection.

6 (e) The Secretary is authorized to promulgate such reg-
7 ulations as may be appropriate to carry out the purposes of
8 this Act, and the Secretaries of the Treasury and the Depart-
9 ment in which the Coast Guard is operating are authorized
10 to promulgate such regulations as may be appropriate to the
11 exercise of responsibilities under subsection 7(c) (1) of this
12 Act.

13 SEC. 8. (a) In carrying out the provisions of this Act,
14 the Secretary, through the Secretary of State, shall encourage
15 foreign countries to provide protection to species or sub-
16 species of fish and wildlife threatened with extinction, to take
17 measures to prevent any fish or wildlife from becoming
18 threatened with extinction, and shall cooperate with such
19 countries in providing technical assistance in developing and
20 carrying out programs to provide such protection, and shall,
21 through the Secretary of State, encourage bilateral and multi-
22 lateral agreements with such countries for the protection, con-
23 servation, and propagation of fish and wildlife. The Secre-
24 tary shall also encourage persons, taking directly or indirectly
25 fish or wildlife in foreign countries or on the high seas for

1 importation into the United States for commercial or other
2 purposes, to develop and carry out, with such assistance as he
3 may provide under any authority available to him, conser-
4 vation practices designed to enhance such fish or wildlife and
5 their habitat. The Secretary of State, in consultation with the
6 Secretary, shall take appropriate measures to encourage the
7 development of adequate measures, including, if appropriate,
8 international agreements, to prevent such fish or wildlife from
9 becoming threatened with extinction.

10 (b) The Secretary of Agriculture and the Secretary
11 shall provide for appropriate coordination of the adminis-
12 tration of this Act and amendments made by this Act, with
13 the administration of the animal quarantine laws (19 U.S.C.
14 1306; 21 U.S.C. 101-105, 111-135b, and 612-614) and
15 the Tariff Act of 1930, as amended (section 1306 of title
16 19). Nothing in this Act or any amendment made by this
17 Act, shall be construed as superseding or limiting in any
18 manner the functions of the Secretary of Agriculture under
19 any other law relating to prohibited or restricted importations
20 of animals and other articles and no proceeding or determina-
21 tion under this Act shall preclude any proceeding or be con-
22 sidered determinative of any issue of fact or law in any pro-
23 ceeding under any Act administered by the Secretary of
24 Agriculture.

25 (c) Nothing in this Act, or any amendment made by

1 this Act, shall be construed as superseding or limiting in
2 any manner the functions and responsibilities of the Secre-
3 tary of the Treasury under the Tariff Act of 1930, as
4 amended, including, without limitation, section 1527 of
5 title 19 relating to the importation of wildlife taken, killed,
6 possessed, or exported to the United States in violation of
7 the laws or regulations of a foreign country.

8 SEC. 9. (a) Subsection 4(c) of the Act of October 15,
9 1966 (80 Stat. 928), as amended (16 U.S.C. 668dd(c)),
10 is further amended by revising the second sentence thereof
11 to read as follows: "With the exception of endangered
12 species listed by the Secretary pursuant to section 2 of the
13 Endangered Species Conservation Act of 1972, nothing in
14 this Act shall be construed to authorize the Secretary to
15 control or regulate hunting or fishing of resident fish and
16 wildlife on lands not within the system."

17 (b) Subsection 10(a) of the Migratory Bird Conser-
18 vation Act (45 Stat. 1224), as amended (16 U.S.C. 715
19 i(a)), is further amended by inserting "or likely within
20 the foreseeable future to become threatened with" between
21 the words "with" and "extinction".

22 (c) Subsection 401(a) of the Act of June 15, 1935
23 (49 Stat. 383), as amended (16 U.S.C. 715 s(a)), is
24 further amended by inserting "or likely within the foreseeable

1 future to become threatened with” between the words “with”
2 and “extinction” in the last sentence thereof.

3 (d) Subsection 6(a) (1) of the Land and Water
4 Conservation Fund Act of 1965 (78 Stat. 903), as amended
5 (16 U.S.C. 460 1-9 (a) (1)), is further amended by in-
6 serting “or likely within the foreseeable future to become
7 threatened with” between the words “with” and “extinc-
8 tion”.

9 SEC. 10. (a) Sections 1 through 3 of the Act of Octo-
10 ber 15, 1966 (80 Stat. 926, 927), as amended (16 U.S.C.
11 668aa-668cc), are hereby repealed in their entirety.

12 (b) Sections 1 through 6 of the Act of December 5,
13 1969 (83 Stat. 275-279; 16 U.S.C. 668cc-1 through
14 668cc-6) are hereby repealed in their entirety.

98^d CONGRESS
1ST SESSION

H. R. 2169

IN THE HOUSE OF REPRESENTATIVES

JANUARY 15, 1973

Mr. ROYBAL introduced the following bill; which was referred to the Committee on Merchant Marine and Fisheries

A BILL

To implement the Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That this Act may be cited as the "Nature Protection Act".

4 SEC. 2. Congress finds that—

5 (1) the animals of our Nation represent an inval-
6 uable natural resource; that in the past inadequate pro-
7 tection and changing conditions have resulted in the ex-
8 tinction of many species with ecological, historical, edu-
9 cational, scientific, and recreational values; and that

1 we cannot afford to allow the disappearance of these
2 assets;

3 (2) there is an overriding need to preserve repre-
4 sentatives of all animal species in their natural habitat
5 in sufficient numbers and over extensive enough areas to
6 protect animals from extinction; and

7 (3) pursuant to our treaty obligations under article
8 VIII and other provisions of the Convention on Nature
9 Protection and Wildlife Preservation, it is the respon-
10 sibility of Congress to protect animal species and sub-
11 species threatened with extinction.

12 **DEFINITIONS**

13 **SEC. 3. For the purposes of this Act—**

14 (a) the term "fish" means any finfish or any part,
15 products, egg, or offspring thereof, or the dead body or
16 parts thereof whether or not included in a manufactured
17 product;

18 (b) the term "wildlife" means any wild mammal,
19 wild bird, amphibian, reptile, mollusk, or crustacean, or
20 any part, products, egg, or offspring thereof, or the dead
21 body or parts thereof whether or not included in a manu-
22 factured products;

23 (c) the term "Convention" means the Convention
24 on Nature Protection and Wildlife Preservation in the
25 Western Hemisphere (56 Stat. 1354) ;

3

1 (d) the term "annex" refers to that portion of the
2 annex to the convention which contains the list of spe-
3 cies submitted by the United States of America; and

4 (e) the term "State" means any of the several
5 States of the United States, the District of Columbia, the
6 Commonwealth of Puerto Rico, and the territories and
7 possessions of the United States.

8 PROHIBITED ACTS

9 SEC. 4. (a) Except as provided in section 5 of this Act,
10 no person within any State, or within any place subject to
11 the jurisdiction of the United States, shall hunt, capture, kill,
12 take, transport, sell, or purchase any fish or wildlife the spe-
13 cies or subspecies of which is listed in the annex to the
14 convention.

15 (b) No person or State (or political subdivision thereof)
16 shall pay or offer to pay any form of bounty for any fish or
17 wildlife the species or subspecies of which is listed in the
18 annex to the convention.

19 EXEMPTIONS

20 SEC. 5. (a) If the Secretary of the Interior determines
21 that it will not endanger the preservation or health of the
22 species or subspecies protected by this Act, he may grant
23 an exemption to any person from the prohibitions of sec-
24 tion 4 (a) of this Act. Such exemptions shall only be granted
25 in order to further scientific purposes; provide for the display

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1 of fish or wildlife in public zoos; administer the area in which
2 the fish or wildlife are found; provide for the propagation
3 in captivity of a species or subspecies with the intention of
4 later release of the fish or wildlife in their natural habitat;
5 or transplant the fish or wildlife to a new natural habitat.

6 (b) Section 4 (a) of this Act shall not apply to the fol-
7 lowing fish or wildlife:

8 (1) the Tule White-fronted Goose (*anser albifrons*
9 *gambelli*);

10 (2) American alligators (*alligator mississippiensis*)
11 found on private property and transported without harm
12 to the animal, to its natural habitat for release in the
13 wild;

14 (3) fish or wildlife in captivity on the effective date
15 of this Act;

16 (4) fish or wildlife raised and kept entirely in
17 captivity;

18 (5) fish or wildlife released as game animals after
19 having been raised in captivity specifically for that
20 purpose;

21 (6) fish or wildlife taken for the religious purposes
22 of Indian tribes; and

23 (7) individual fish or wildlife which are infected
24 with the plague, rabies, tularemia, or other dangerous
25 disease.

5

1 **LISTING OF ANIMALS IN THE ANNEX**

2 **SEC. 6.** When appropriate the Secretary of State shall
3 transmit to the Pan American Union the list of species of
4 fish and wildlife to be included as part of the annex. This
5 list shall include, but not be limited to, all species of fish
6 and wildlife found by the Secretary of the Interior, pursuant
7 to the provisions and standards of Public Law 89-669 (Oct.
8 15, 1966), to be rare or endangered.

9 **ARREST, ENFORCEMENT, SEARCHES, AND SEIZURES**

10 **SEC. 7.** Any employee of the Department of the In-
11 terior authorized by the Secretary of the Interior; any Coast
12 Guard officer; and United States marshal or deputy marshal;
13 any customs officer; and civil officer having authority to ap-
14 prehend offenders under the laws of a State; and any other
15 person authorized to enforce this Act shall have the power
16 to: (1) arrest without warrant or other process any person
17 committing in his view or presence a violation of this Act;
18 (2) take any person arrested for violation of this Act for
19 examination or trial before any officer or court of competent
20 jurisdiction; and (3) with a search warrant search any place
21 where he may have reason to believe that a violation of this
22 Act has been committed.

23 **PENALTY**

24 **SEC. 8.** Any person that violates any provision of sec-
25 tion 4 (a) of this Act shall be deemed guilty of a mis-

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1 demeanor and upon conviction thereof shall pay all costs of
2 the proceedings and be fined not more than \$5,000 or im-
3 prisoned not more than six months, or both.

4 STATE LAWS AND REGULATIONS

5 SEC. 9. (a) Except to the extent otherwise specifically
6 provided in the Convention or this Act, nothing in this Act
7 shall be construed so as to (1) abridge the presently exist-
8 ing responsibility of any State for the protection, preserva-
9 tion, and scientific management of fish and wildlife; or (2)
10 abridge or deprive any such State of its power and right to
11 make and enforce laws and regulations for the protection,
12 preservation, and scientific management of fish and wildlife.

13 (b) The Secretary of the Interior, in carrying out his
14 duties under this Act, is authorized from time to time, to
15 consult with the Governors of the several States and the
16 Commissioner of the District of Columbia.

17 SEPARABILITY

18 SEC. 10. If any provisions of this Act or the application
19 of such provisions to any circumstances or persons shall be
20 held invalid, the validity of the remainder of the Act and
21 the applicability of such provisions to other circumstances
22 or persons shall not be affected thereby.

93^d CONGRESS
1st SESSION

H. R. 2735

IN THE HOUSE OF REPRESENTATIVES

JANUARY 23, 1973

Mr. THOMSON of Wisconsin introduced the following bill; which was referred to the Committee on Merchant Marine and Fisheries

A BILL

To provide for the conservation, protection, and propagation of species or subspecies of fish and wildlife that are threatened with extinction or likely within the foreseeable future to become threatened with extinction, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That this Act may be cited as the "Endangered Species
4 Conservation Act of 1973".

5 FINDINGS, PURPOSES, AND POLICY

6 SEC. 2. (a) The Congress finds and declares that one

1 of the unfortunate consequences of growth and development
2 in the United States and elsewhere has been the extermina-
3 tion of some species or subspecies of fish and wildlife; that
4 serious losses in species of wild animals with educational,
5 historical, recreational, and scientific value have occurred
6 and are occurring; that the United States has pledged it-
7 self, pursuant to migratory bird treaties with Canada and
8 Mexico, the Migratory and Endangered Bird Treaty with
9 Japan, the Convention on Nature Protection and Wildlife
10 Preservation in the Western Hemisphere, the International
11 Convention for the Northwest Atlantic Fisheries, the Inter-
12 national Convention for the High Seas Fisheries of the
13 North Pacific Ocean, and other international agreements,
14 to conserve and protect, where practicable, the various
15 species of fish and wildlife that are threatened with extinc-
16 tion; and that the conservation, protection, restoration, or
17 propagation of such species will inure to the benefit of all
18 citizens.

19 (b) The purposes of this Act are to provide a program
20 for the conservation, protection, restoration, or propagation
21 of species and subspecies of fish and wildlife that are threat-
22 ened with extinction, or are likely within the foreseeable
23 future to become threatened with extinction.

24 (c) It is further declared to be the policy of Congress

1 that all Federal departments and agencies shall seek to pro-
2 tect species or subspecies of fish and wildlife that are threat-
3 ened with extinction or are likely within the foreseeable
4 future to become threatened with extinction, and, wherever
5 practicable, shall utilize their authorities in furtherance of
6 the purpose of this Act.

7 DEFINITIONS

8 SEC. 3. For the purposes of this Act—

9 (1) The term “Federal lands” means all lands or
10 interests therein over which Congress has legislative au-
11 thority under article IV, section 3, clause 2 of the
12 United States Constitution, including, without limitation,
13 lands enumerated in section 1400 of title 43, United
14 States Code.

15 (2) The term “fish” means any fish or any part,
16 products, egg, or offspring thereof, or the dead body or
17 parts thereof.

18 (3) The term “import” means to bring into the
19 territorial limits of the United States and includes, with-
20 out limitation, entry into a foreign trade zone, and trans-
21 shipment through any portion of the United States
22 without customs entry.

23 (4) The term “person” means (A) any private
24 person or entity, and (B) any officer, employee, agent,

1 department, or instrumentality of the Federal Govern-
2 ment, of any State or political subdivision thereof, or of
3 any foreign government.

4 (5) The term "Secretary" means the Secretary of
5 the Interior and the Secretary of Commerce with re-
6 spect to functions and responsibilities under this Act
7 relating to fish and wildlife, consistent with such
8 program responsibilities therefor as are vested pursuant
9 to the provisions of Reorganization Plan Numbered 4 of
10 1970.

11 (6) The term "take" means (A) with respect to
12 fish or wildlife, to threaten, harass, hunt, capture, or kill,
13 or attempt to threaten, harass, hunt, capture, or kill; and
14 (B) with respect to flora, to collect, sever, remove, or
15 otherwise damage in any manner, or to attempt to collect,
16 sever, remove, or otherwise damage in any manner.

17 (7) The term "United States" includes the sev-
18 eral States, the District of Columbia, the Commonwealth
19 of Puerto Rico, the Canal Zone, the possessions of the
20 United States, and the Trust Territory of the Pacific
21 Islands.

22 (8) The term "wildlife" means any wild mammal,
23 game or nongame migratory bird, wild bird, amphibian,
24 reptile, mollusk, crustacean, or other animal, or any part,

1 products, egg, or offspring thereof, or the dead body or
2 parts thereof, including migratory, nonmigratory and
3 endangered birds for which protection is also afforded
4 by treaty or other international agreement.

5 DETERMINATION OF ENDANGERED SPECIES

6 SEC. 4. (a) A species or subspecies of fish or wildlife
7 shall be regarded as an endangered species whenever the
8 Secretary by regulation determines, based on the best scien-
9 tific and commercial data available to him and after consulta-
10 tion, as appropriate, with the affected States, and, in coopera-
11 tion with the Secretary of State, the country or countries in
12 which such fish and wildlife are normally found or whose
13 citizens harvest the same on the high seas, and with inter-
14 ested persons and organizations, and other interested Federal
15 agencies, that the continued existence of such species or sub-
16 species of fish or wildlife throughout all or a significant por-
17 tion of its habitat or range, is either presently threatened
18 with extinction or will likely within the foreseeable future
19 become threatened with extinction, due to any of the follow-
20 ing factors:

- 21 (1) the present or threatened destruction, modifica-
22 tion, or curtailment of its habitat or range;
23 (2) overutilization for commercial, sporting, sci-
24 entific, or educational purposes;

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1 (3) disease or predation;

2 (4) the inadequacy of existing regulatory mecha-
3 nisms; or

4 (5) other natural or manmade factors affecting its
5 continued existence.

6 (b) The Secretary shall publish in the Federal Register
7 not less than annually a list, by scientific and common name
8 or names, species or subspecies determined, pursuant to this
9 section, to be endangered, indicating as to each species or
10 subspecies so listed whether such species or subspecies is
11 threatened with extinction or is likely within the foreseeable
12 future to become threatened with extinction and, in either
13 case, over what portion of the range of such species or sub-
14 species this condition exists. The Secretary may, from time
15 to time, by regulation revise any such list. The endangered
16 species lists which are effective as of the date of the enact-
17 ment of this Act shall be republished to conform to the pro-
18 visions of this Act, except that until such republication
19 nothing herein shall be deemed to invalidate such endan-
20 gered species lists. The provisions of section 553 of title
21 5, United States Code, shall apply to any regulation issued
22 under this subsection. The Secretary shall, upon the petition
23 of an interested person under subsection 553 (e) of title 5,
24 United States Code, also conduct a review, on the record
25 after opportunity for agency hearing, of any listed or unlisted

1 species or subspecies of fish or wildlife proposed to be re-
2 moved from or added to the list, but only if he finds and
3 publishes his finding that such person has presented sub-
4 stantial evidence to warrant such a review.

5 LAND ACQUISITION AND AGENCY COMPLIANCE

6 SEC. 5. (a) The Secretary shall utilize the land ac-
7 quisition and other authorities of the Migratory Bird Con-
8 servation Act, as amended, the Fish and Wildlife Act of
9 1956, as amended, and the Fish and Wildlife Coordination
10 Act, as appropriate, to carry out a program in the United
11 States of conserving, protecting, restoring, or propagating
12 those species and subspecies of fish and wildlife that he lists
13 as endangered species pursuant to section 4 of this Act.

14 (b) In addition to the land acquisition authorities other-
15 wise available to him, the Secretary is hereby authorized to
16 acquire by purchase, donation, or otherwise, lands or inter-
17 ests therein needed to carry out the purposes of this Act re-
18 lating to the conservation, protection, restoration, or propa-
19 gation of those species or subspecies of fish and wildlife that
20 he lists as endangered species pursuant to section 4 of this
21 Act.

22 (c) Funds made available pursuant to the Land and
23 Water Conservation Fund Act of 1965 as amended may
24 be used for the purpose of acquiring lands, waters, or inter-
25 ests therein pursuant to this section that are needed for

1 the purpose of conserving, protecting, restoring, or propa-
2 gating those species or subspecies of fish and wildlife, that
3 he lists as endangered species pursuant to section 4 of this
4 Act.

5 (d) The Secretary shall review other programs admin-
6 istered by him and, to the extent practicable, utilize such
7 programs in furtherance of the purposes of this Act. All other
8 Federal departments and agencies shall, in consultation with
9 and with the assistance of the Secretary, utilize, wherever
10 practicable, their authorities in furtherance of the purposes
11 of this Act by carrying out programs for the protection
12 of endangered species and by taking such actions as may
13 be necessary to insure that actions authorized, funded, regu-
14 lated, or administered by them do not jeopardize the contin-
15 ued existence of endangered species or result in destruction or
16 modification of critical habitat of such species.

17 (e) Subject to the provisions of section 1415 of the
18 Supplemental Appropriation Act, 1953 (31 U.S.C. 724),
19 the President is authorized, as a demonstration of the com-
20 mitment of the United States to the worldwide protection of
21 endangered species of fish and wildlife, to use foreign cur-
22 rencies accruing to the United States Government under
23 the Agricultural Trade Development and Assistance Act of
24 1954 or any other law to provide to any foreign country
25 (with its consent) assistance in the development and man-

1 agement of programs in that country which the Secretary
2 determines to be necessary or useful for the conservation,
3 protection, restoration, or propagation of any species or
4 subspecies of fish and wildlife listed by the Secretary pursuant
5 to section 4 of this Act. The President shall provide assist-
6 ance (which includes, but is not limited to, the acquisition,
7 by lease or otherwise, of lands, waters, or interests therein)
8 to foreign countries under this section under such terms and
9 conditions as he deems appropriate.

10 (f) In carrying out the provisions of this Act, the Sec-
11 retary, through the Secretary of State, shall encourage
12 foreign countries to provide protection to endangered species
13 or subspecies of fish or wildlife, to take measures to prevent
14 any fish or wildlife from becoming endangered, and he shall,
15 through the Secretary of State, encourage bilateral and
16 multilateral agreements with such countries for the con-
17 servation and propagation of fish and wildlife. The
18 Secretary is authorized to assign or otherwise make available
19 any officer or employee of his department for the purpose of
20 cooperating with foreign countries and international organi-
21 zations in developing personnel resources and programs
22 which promote conservation of fish or wildlife, including (1)
23 educational training of United States and foreign personnel,
24 here or abroad, in the subjects of fish and wildlife manage-
25 ment, research, and law enforcement; and (2) rendering

1 professional assistance abroad in such matters. The Secre-
2 tary is also authorized to conduct or cause to be conducted
3 such law enforcement investigations and research abroad as
4 he deems necessary to carry out the obligations imposed
5 upon him by this Act.

6 COOPERATION WITH THE STATES

7 SEC. 6. (a) In carrying out the program authorized
8 by this Act, the Secretary shall cooperate to the maximum
9 extent practicable with the several States. Such cooperation
10 shall include consultation before the acquisition of any land
11 for the purpose of conserving, protecting, restoring, or prop-
12 agating any endangered species.

13 (b) The Secretary may enter into agreements with the
14 States for the administration and management of any area
15 established for the conservation, protection, restoration, or
16 propagation of endangered species. Any revenues derived
17 from the administration of such areas under these agree-
18 ments shall be subject to the provisions of section 401 of
19 the Act of June 15, 1935 (49 Stat. 383), as amended (16
20 U.S.C. 715s).

21 (c) The Secretary may delegate to a State the authority
22 to regulate the taking by any person of endangered species or
23 subspecies of resident fish and wildlife when he determines
24 that such State maintains an adequate and active program,

1 consistent with the policies and purposes of this Act, to man-
2 age and protect such endangered species in accordance with
3 criteria issued by the Secretary.

4 (d) Any action taken by the Secretary under this section
5 shall be subject to his periodic and continual review at no
6 greater than annual intervals. Such review shall include the
7 consideration of comment received from interested persons.

8 (e) Nothing in this Act, or any amendment made by
9 this Act, shall be construed as superseding or limiting the
10 power of any State to enact legislation more restrictive than
11 the provisions of this Act for the protection and conservation
12 of fish and wildlife, including the regulation or prohibition of
13 the retail sale of specimens or of products processed or manu-
14 factured from the specimens of fish and wildlife, whether
15 such specimens are alive or dead.

16 (f) The Secretary of the Interior shall promptly under-
17 take an investigation and study regarding the functions and
18 responsibilities which the States should have with respect to
19 the management and protection of endangered species of fish
20 and wildlife. The Secretary of the Interior shall report the
21 results of the investigation and study to Congress within one
22 year after the date of the enactment of this Act, and such
23 report may include such recommendations as he may have
24 regarding the extent to, and manner in, which the Federal

1 Government should assist the States in establishing and im-
2 plementing management and protection programs for en-
3 dangered species.

4 PROHIBITED ACTS

5 SEC. 7. (a) Notwithstanding any other Act of Congress
6 or regulation issued pursuant thereto, and except as other-
7 wise provided in section 8 of this Act, any person who—

8 (A) imports into or exports from the United
9 States, receives, or causes to be so imported, received,
10 or exported; or

11 (B) takes or causes to be taken within the United
12 States, the territorial sea of the United States, Federal
13 lands, or upon the high seas; or

14 (C) ships, carries, or receives by any means in
15 interstate commerce

16 any species or subspecies of fish or wildlife which the Sec-
17 retary has listed as an endangered species threatened with
18 extinction pursuant to section 4 of this Act shall be punished
19 in accordance with the provisions of section 9 of this Act.

20 (b) Whenever the Secretary, pursuant to section 4 of
21 this Act, lists a species or subspecies as an endangered species
22 which is likely within the foreseeable future to become
23 threatened with extinction, he shall issue such regulations
24 as he deems necessary or advisable to provide for the con-
25 servation, protection, restoration, or propagation of such

1 species or subspecies, including regulations subjecting to
2 punishment in accordance with section 9 of this Act any
3 person who—

4 (1) imports into or exports from the United States,
5 receives, or causes to be so imported, received, or ex-
6 ported; or

7 (2) takes or causes to be taken within the United
8 States, the territorial sea of the United States, Federal
9 lands, or upon the high seas; or

10 (3) ships, carries, or receives by any means in
11 interstate commerce

12 any such species or subspecies of fish or wildlife likely
13 within the foreseeable future to become threatened with
14 extinction.

15 (c) For the purpose of facilitating enforcement of this
16 Act, the Secretary may from time to time, by regulation, ex-
17 tend the protection of this section, to the extent he deems it
18 advisable, to any species or subspecies of fish or wildlife
19 which is not listed as an endangered species, but which so
20 closely resembles in appearance, at the point in question,
21 a species or subspecies of fish or wildlife which has been
22 listed as endangered, that substantial difficulty is posed to
23 enforcement personnel in attempting to differentiate between
24 the endangered and nonendangered species or subspecies of

1 fish or wildlife, and this difficulty poses an additional threat
2 to the endangered species or subspecies.

3 EXCEPTIONS

4 SEC. 8. (a) The Secretary may permit, under such
5 terms and conditions as he may prescribe, the importation,
6 taking, or the transportation in interstate commerce of any
7 species or subspecies of fish or wildlife listed as an en-
8 dangered species threatened with extinction for scientific
9 purposes, and for the propagation of such fish and wildlife
10 in captivity for preservation purposes, but only if he finds
11 that such importation, exportation, taking, transportation in
12 interstate commerce, or projected use will not adversely af-
13 fect the regenerative capacity of such specimen or of such
14 species or subspecies in a significant portion of its range or
15 habitat or otherwise affect the survival of the wild population
16 of such species.

17 (b) In order to minimize undue economic hardship to
18 any person importing, exporting, taking, or transporting in
19 interstate commerce any species or subspecies of fish or
20 wildlife which is listed as an endangered species pursuant
21 to section 4 of this Act under any contract entered into prior
22 to the date of original publication of such listing in the Fed-
23 eral Register, the Secretary, upon such person filing an
24 application with him and upon filing such information as
25 the Secretary may require showing, to his satisfaction, such

1 hardship, may permit such person to import, export, take
2 or transport such species or subspecies in such quantities and
3 for such periods, not to exceed one year, as he determines to
4 be appropriate.

5 PENALTIES AND ENFORCEMENT

6 SEC. 9. (a) (1) Any person who violates any provi-
7 sion of this Act or of any regulation or permit issued there-
8 under, other than a person who commits a violation the
9 penalty for which is prescribed by subsection (b) of this
10 section, shall be assessed a civil penalty by the Secretary
11 of not more than \$10,000 for each such violation. No
12 penalty shall be assessed unless such person is given notice
13 and opportunity for a hearing with respect to such viola-
14 tion. Each violation shall be a separate offense. Any such
15 civil penalty may be compromised by the Secretary. Upon
16 any failure to pay the penalty assessed under this para-
17 graph, the Secretary may request the Attorney General
18 to institute a civil action in a district court of the United
19 States for any district in which such person is found or
20 resides or transacts business to collect the penalty, and
21 such court shall have jurisdiction to hear and decide any
22 such action. In the case of Guam such actions may be
23 brought in the district court of Guam; in the case of the
24 Virgin Islands such actions may be brought in the district
25 court of the Virgin Islands, and in the case of American

1 Samoa such actions may be brought in the District Court
2 of the United States for the District of Hawaii and such
3 courts shall have jurisdiction of such actions. In hearing
4 such action, the court shall sustain the Secretary's action
5 if such action is supported by substantial evidence.

6 (2) Whenever any property is seized pursuant to sub-
7 section (c) of this section, the Secretary shall move to dis-
8 pose of the civil penalty proceedings pursuant to paragraph
9 (1) of this subsection as expeditiously as possible. Upon
10 the assessment and collection of a civil penalty pursuant to
11 paragraph (1) of this subsection, any property so seized
12 may be proceeded against in any court of competent
13 jurisdiction and forfeited. Fish or wildlife so forfeited
14 shall be conveyed to the Secretary for disposition by him
15 in such a manner as he deems appropriate. If, with respect
16 to any such property so seized, no compromise forfeiture
17 has been achieved or no action is commenced to obtain the
18 forfeiture of such fish, wildlife, property, or item within
19 thirty days following the completion of proceedings involv-
20 ing an assessment and collection of a civil penalty, such
21 property shall be immediately returned to the owner or the
22 consignee in accordance with regulations promulgated by
23 the Secretary.

24 (3) Proceedings for the assessment of civil penalties
25 pursuant to paragraph (1) of this subsection shall be con-

1 ducted in accordance with section 554 of title 5. The Secre-
2 tary may issue subpoenas for the attendance and testimony
3 of witnesses and the production of relevant papers, books,
4 and documents, and administer oaths. Witnesses summoned
5 shall be paid the same fees and mileage that are paid wit-
6 nesses in the courts of the United States. In case of con-
7 tumacy or refusal to obey a subpoena served upon any per-
8 son pursuant to this paragraph, the district court of the
9 United States for any district in which such person is found
10 or resides or transacts business, upon application by the
11 United States and after notice to such person, shall have
12 jurisdiction to issue an order requiring such person to ap-
13 pear and give testimony before the Secretary or to appear
14 and produce documents before the Secretary, or both; and
15 any failure to obey such order of the court may be punished
16 by such court as a contempt thereof.

17 (b) Any person who knowingly violates any provision
18 of this Act, or of any regulation or permit issued there-
19 under, shall, upon conviction, be fined not more than \$20,-
20 000 or imprisoned for not more than one year, or both, and
21 any Federal hunting or fishing licenses, permits, or stamps
22 may be revoked or withheld for a period of up to five years.
23 Upon conviction, (1) any fish or wildlife seized shall be for-
24 feited to the Secretary for disposal by him in such manner as
25 he deems appropriate, and (2) any other property seized

1 pursuant to subsection (c) of this section may, in the dis-
2 cretion of the court, commissioner, or magistrate, be forfeited
3 to the United States or otherwise disposed of. If no convic-
4 tion results from any such alleged violation, such property
5 so seized in connection therewith shall be immediately re-
6 turned to the owner or consignee in accordance with regula-
7 tions promulgated by the Secretary, unless the Secretary,
8 within thirty days following the final disposition of the case
9 involving such violation, commences proceedings under sub-
10 section (a) of this section.

11 (c) (1) The provisions of sections 7 and 8 of this
12 Act and any regulations or permits issued pursuant thereto,
13 or pursuant to subsection (d) or (e) of this section, shall be
14 enforced by the Secretary, the Secretary of the Treasury,
15 or the Secretary of the Department in which the Coast
16 Guard is operating, or all such Secretaries. Each such Sec-
17 retary may utilize, by agreement, with or without reimburse-
18 ment, the personnel, services, and facilities of any other
19 Federal agency or any State agency.

20 (2) Any authorized agent of the Department of the
21 Interior, the Department of Commerce, or the Department
22 of the Treasury may, with or without a warrant, arrest any
23 person who such agent has probable cause to believe is
24 knowingly violating this Act, in his presence or view, or any
25 regulation or permit issued thereunder, the penalty for which

1 is provided under subsection (b) of this section. An agent
2 who has made an arrest of a person in connection with any
3 such violation may search such person at the time of his
4 arrest and seize any property taken, used, or possessed in
5 connection with any such violation.

6 (3) Any authorized agent of the Department of the
7 Interior, the Department of Commerce, or the Department
8 of the Treasury shall have authority to search and seize with
9 or without a warrant, as provided by the customs laws and by
10 the law relating to search and seizure. Any such officer or
11 agent is authorized to execute warrants to search for and
12 seize any property, including, for the purposes of this sec-
13 tion, any fish, wildlife, aircraft, boat, or other conveyance,
14 weapon, business records, shipping documents, or other items
15 which have been taken, used, or possessed in connection
16 with the violation of any section, regulation, or permit with
17 respect to which a civil or criminal penalty may be assessed,
18 pursuant to subsection (a) or (b) of this section. Any prop-
19 erty seized pursuant to this section shall be held by any agent
20 authorized by the Secretary or the Secretary of the Treasury,
21 or by a United States marshal, pending disposition of pro-
22 ceedings under subsection (a) or (b) of this section; except
23 that either Secretary may, in lieu of holding such property,
24 either (1) permit a bond or other satisfactory surety to be
25 posted, or (2) place the fish or wildlife in the custody of
26 such person as he shall designate. Upon the imposition of

1 a civil or criminal penalty, or a forfeiture, the costs to the
2 Government of transfer, board, and handling, including the
3 cost of investigations at a nondesignated port of entry, shall
4 be payable to the account of the Secretary. The owner or
5 consignee of any property so seized shall, as soon as prac-
6 ticable following such seizure, be notified of the fact in
7 accordance with regulations established by the Secretary.

8 (d) The Secretary may request the Attorney General
9 to bring appropriate action to prevent threatened violations
10 of this Act, or of any regulations or orders promulgated
11 pursuant thereto.

12 (e) For the purposes of facilitating the enforcement
13 of this Act and reducing the costs thereof, the Secretary,
14 with the approval of the Secretary of the Treasury, shall,
15 after notice and an opportunity for a public hearing, from
16 time to time designate, by regulation, any port or ports
17 in the United States for the importation of fish and wild-
18 life (other than shellfish and fishery products) into the
19 United States. The importation of such fish or wildlife into
20 any port in the United States, except those so designated,
21 shall be prohibited after the effective date of such designa-
22 tions; except that the Secretary, under such terms and
23 conditions as he may prescribe, may permit importation
24 at nondesignated ports in the interest of the health or
25 safety of the fish or wildlife. Such regulations may provide
26 other exceptions to such prohibition if the Secretary, in

1 his discretion, deems it appropriate and consistent with the
2 purposes of this subsection.

3 (f) The Secretary is authorized to promulgate such
4 regulations as may be appropriate to carry out the purposes
5 of this Act, and the Secretaries of the Treasury and the
6 department in which the Coast Guard is operating are
7 authorized to promulgate such regulations as may be appro-
8 priate to the exercise of responsibilities under subsection
9 (c) (1) of this section.

10 INTERNATIONAL AND INTERGOVERNMENTAL COOPERATION

11 SEC. 10. (a) (1) In carrying out the provisions of
12 this Act, the Secretary, through the Secretary of State,
13 shall encourage foreign countries to provide protection to
14 endangered species or subspecies of fish and wildlife, to take
15 measures to prevent any fish or wildlife from becoming en-
16 dangered, and shall cooperate with such countries in provid-
17 ing technical assistance in developing and carrying out pro-
18 grams to provide such protection, and shall, through the
19 Secretary of State, encourage bilateral and multilateral agree-
20 ments with such countries for the protection, conservation,
21 or propagation of fish and wildlife. The Secretary shall also
22 encourage persons, taking directly or indirectly fish or wild-
23 life in foreign countries or on the high seas for importation
24 into the United States for commercial or other purposes, to
25 develop and carry out, with such assistance as he may provide
26 under any authority available to him, conservation practices

1 designed to enhance such fish or wildlife and their habitat
2 or range. The Secretary of State, in consultation with the
3 Secretary, shall take appropriate measures to encourage the
4 development of adequate measures, including, if appro-
5 priate, international agreements, to prevent such fish or
6 wildlife from becoming threatened with extinction.

7 (2) To assure the worldwide conservation of endan-
8 gered species and to avoid unnecessary harm to affected
9 United States industries, the Secretary, through the Secre-
10 tary of State, shall seek the convening of an international
11 ministerial meeting on fish and wildlife prior to July 1,
12 1974, and included in the business of that meeting shall be
13 the signing of a binding international convention on the
14 conservation of endangered species.

15 (b) The Secretary of Agriculture and the Secretary
16 shall provide for appropriate coordination of the adminis-
17 tration of this Act and amendments made by this Act, with
18 the administration of the animal quarantine laws (19 U.S.C.
19 1306; 21 U.S.C. 101-105, 111-135b, and 612-614).
20 Nothing in this Act, or any amendment made by this Act,
21 shall be construed as superseding or limiting in any manner
22 the functions of the Secretary of Agriculture under any
23 other law relating to prohibited or restricted importations
24 of animals and other articles and no proceeding or determi-
25 nation under this Act shall preclude any proceeding or be

1 considered determinative of any issue of fact or law in any
2 proceeding under any Act administered by the Secretary
3 of Agriculture.

4 (c) Whenever the Secretary determines, pursuant to
5 this Act or any other authority vested in him, that a species
6 or subspecies of fish or wildlife is endangered, the Secretary
7 of Agriculture may use all authorities available to him with
8 respect to research, investigations, conservation, develop-
9 ment, protection, management, and enhancement of fish and
10 wildlife, including, but not limited to, the conservation oper-
11 ations program, watershed protection and flood prevention
12 programs, rural environmental assistance program, Great
13 Plains conservation program, resource conservation and
14 development program, forestry programs, and water bank
15 program, in the protection, control, management, or en-
16 hancement of such species or subspecies. Recognizing the
17 national and international interest in the protection and en-
18 hancement of such species or subspecies, the Secretary of
19 Agriculture is authorized, notwithstanding the provisions of
20 any other law, to bear the full cost, or any lesser amount
21 that he, in consultation with the Secretary, may determine
22 desirable to accomplish the objectives of the Act, of the cost
23 of installing any practice, measure, work of improvement,
24 facility, or other developmental, protective, or management
25 systems on private land, the primary purpose of which is

1 for the purpose of enabling the landowner to comply with
2 the regulations, or other recommendations, of the Secretary
3 pertaining to the protection, control, management, or en-
4 hancement of such species or subspecies. The Secretary of
5 Agriculture, in carrying out the purposes of this section,
6 shall utilize his authorities to conduct research and investi-
7 gations into vegetative and structural methods and other
8 methods and practices, measures, works of improvement, and
9 facilities most appropriate or effective in the protection,
10 control, management, or enhancement of such species or
11 subspecies. If determined desirable, the Secretary and the
12 Secretary of Agriculture shall be authorized to jointly carry
13 out research, surveys, and investigations. The Secretary is
14 authorized to transfer to the Secretary of Agriculture such
15 funds as may be necessary to carry out the purposes of this
16 subsection.

17 (d) Nothing in this Act, or any amendment made by
18 this Act, shall be construed as superseding or limiting in
19 any manner the functions and responsibilities of the Secre-
20 tary of the Treasury under the Tariff Act of 1930, as
21 amended, including, without limitation, section 527 of such
22 Act (19 U.S.C. 1527) relating to the importation of wild-
23 life taken, killed, possessed, or exported to the United
24 States in violation of the laws or regulations of a foreign
25 country.

ENDANGERED FLORA

1
2 SEC. 11. The Secretary of the Smithsonian Institution,
3 in conjunction with other affected agencies, is authorized and
4 directed to review (1) species and subspecies of endangered
5 plants, trees, and other flora, and (2) methods of providing
6 adequate protection to such species and subspecies, and to
7 report to Congress, within one year after the date of the
8 enactment of this Act, the results of such review. For the
9 purposes of this section, there is authorized to be appro-
10 priated \$250,000.

CONFORMING AMENDMENTS

11
12 SEC. 12. (a) Subsection 4(c) of the Act of Octo-
13 ber 15, 1966 (80 Stat. 928), as amended (16 U.S.C. 668dd
14 (c)), is further amended by revising the second sentence
15 thereof to read as follows: "With the exception of endangered
16 species listed by the Secretary pursuant to section 4 of the
17 Endangered Species Conservation Act of 1972, nothing in
18 this Act shall be construed to authorize the Secretary to
19 control or regulate hunting or fishing of resident fish and
20 wildlife on lands not within the system."

21 (b) Subsection 10(a) of the Migratory Bird Conser-
22 vation Act (45 Stat. 1224), as amended (16 U.S.C. 715i
23 (a)), is further amended by inserting "or likely within
24 the foreseeable future to become threatened with" between
25 the words "with" and "extinction".

1 (c) Subsection 401 (a) of the Act of June 15, 1935
2 (49 Stat. 383), as amended (16 U.S.C. 715s (a)), is
3 further amended by inserting "or likely within the foresee-
4 able future to become threatened with" between the words
5 "with" and "extinction" in the last sentence thereof.

6 (d) Section 6 (a) (1) of the Land and Water Conserva-
7 tion Fund Act of 1965 (16 U.S.C. 460l—9 (a) (1)) is
8 amended by striking out:

9 "THREATENED SPECIES.—For any national area
10 which may be authorized for the preservation of species
11 of fish or wildlife that are threatened with extinction."
12 and inserting in lieu thereof the following:

13 "ENDANGERED SPECIES.—For lands, waters, or
14 interests therein, the acquisition of which is authorized
15 under section 5 (c) of the Endangered Species Conser-
16 vation Act of 1972, needed for the purpose of conserv-
17 ing, protecting, restoring, or propagating endangered
18 species of fish and wildlife."

19 **REPEALS**

20 SEC. 13. (a) Sections 1 through 3 of the Act of Octo-
21 ber 15, 1966 (80 Stat. 926, 927), as amended (16 U.S.C.
22 668aa—668cc), are hereby repealed in their entirety.

23 (b) Sections 1 through 6 of the Act of December 5,
24 1969 (83 Stat. 275—279; 16 U.S.C. 668cc—1 through
25 668c—6) are hereby repealed in their entirety.

93d CONGRESS
1st Session

H. R. 4758

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 27, 1973

Mr. DINGELL (for himself, Mr. GROVER, Mr. LEGGETT, Mr. MAILLIARD, Mr. BIAGGI, Mr. RUPPE, Mr. ANDERSON of California, Mr. GOODLING, Mr. KYROS, Mr. McCLOSKEY, Mr. METCALFE, Mr. STEELE, Mr. STUBBS, Mr. FORSYTHE, Mr. DU PONT, Mr. MILLS of Maryland, Mr. COHEN, Mr. PRITCHARD, and Mr. TOWELL of Nevada) introduced the following bill; which was referred to the Committee on Merchant Marine and Fisheries

A BILL

To provide for the conservation, protection, and propagation of species or subspecies of fish and wildlife that are presently threatened with extinction or likely within the foreseeable future to become threatened with extinction; and for other purposes

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That this Act may be cited as the "Endangered Species
4 Conservation Act of 1973".

5 SEC. 2. (a) The Congress finds and declares that one
6 of the unfortunate consequences of growth and development
7 in the United States and elsewhere has been the extermina-

1 tion of some species or subspecies of fish and wildlife, that
2 serious losses in other animals with educational, histori-
3 cal, recreational, and scientific value have occurred and are
4 occurring; that the United States has pledged itself, pursu-
5 ant to migratory bird treaties with Canada and Mexico, the
6 migratory and endangered bird treaty with Japan, the
7 Convention on Nature Protection and Wildlife Preservation
8 in the Western Hemisphere, and other international agree-
9 ments to conserve and protect, where practicable, the vari-
10 ous species or subspecies of fish and wildlife, including game
11 and nongame migratory birds, that are presently threatened
12 with extinction; and that the conservation, protection, res-
13 toration, and propagation of such species or subspecies will
14 inure to the benefit of all citizens. The purposes of this
15 Act are to provide a program for the conservation, protec-
16 tion, restoration, and propagation of selected species or
17 subspecies of fish and wildlife, including migratory birds,
18 that are presently threatened with extinction, or are likely
19 within the foreseeable future to become threatened with
20 extinction.

21 (b) It is further declared to be the policy of Congress
22 that all Federal departments and agencies shall seek to
23 protect species or subspecies of fish and wildlife, including
24 migratory birds, that are presently threatened with extinc-
25 tion or are likely within the foreseeable future to become

1 threatened with extinction, and, insofar as is practicable
2 and consistent with the primary purposes of such bureaus,
3 agencies and services, shall utilize their authorities in fur-
4 therance of the purpose of this Act.

5 (c) (1) A species or subspecies of fish or wildlife shall
6 be regarded as an endangered species whenever, in his dis-
7 cretion, the Secretary determines, based on the best scientific
8 and commercial data available to him and after consultation,
9 as appropriate, with the affected States, and, in cooperation
10 with the Secretary of State, the country or countries in which
11 such fish and wildlife are normally found or whose citizens
12 harvest the same on the high seas, and to the extent prac-
13 ticable, with interested persons and organizations, and other
14 interested Federal agencies, that the continued existence of
15 such species or subspecies of fish or wildlife, in the judgment
16 of the Secretary, is either presently threatened with extinc-
17 tion or will likely within the foreseeable future become
18 threatened with extinction, throughout all or a significant
19 portion of its range, due to any of the following factors:
20 (i) the destruction, drastic modification, or severe curtail-
21 ment or the threatened destruction, drastic modification, or
22 severe curtailment of its habitat; or (ii) its overutilization for
23 commercial, sporting, scientific, or educational purposes; or
24 (iii) the effect on it of disease or predation; or (iv) the in-
25 adequacy of existing regulatory mechanisms; or (v) other
26 natural or manmade factors affecting its continued existence.

1 (2) After making such determination, the Secretary
2 shall publish in the Federal Register, and from time to time
3 he may revise, by regulation, a list, by scientific and com-
4 mon name of such endangered species, indicating as to each
5 species or subspecies so listed whether such species or sub-
6 species is presently threatened with extinction or likely within
7 the foreseeable future to become threatened with extinction
8 and, in either case, over what portion of the range of such
9 species this condition exists. The endangered species lists
10 which are effective as of the date of enactment shall be repub-
11 lished to conform to the classification of endangered species
12 provided for in this Act: *Provided, however,* That until such
13 republication such an endangered species already listed shall
14 be considered an endangered species presently threatened
15 with extinction pursuant to this Act. An endangered species
16 which is to be republished as a species presently threatened
17 with extinction shall not require public hearing or comment
18 under the provisions of section 553 of title 5, United States
19 Code. Such provisions shall apply to any other regulation
20 issued under this subsection. The Secretary shall, upon the
21 petition of an interested person under subsection 553 (e)
22 of title 5, United States Code, also conduct a review of any
23 listed or unlisted species or subspecies of fish and wildlife
24 proposed to be removed from, added to, or reclassified
25 within the list, but only when he finds and publishes his

1 finding that, to his satisfaction, such person has presented
2 substantial evidence to warrant such a review.

3 (d) For the purposes of this Act, the term—

4 (1) “fish and/or wildlife” means any wild animal,
5 whether or not raised in captivity, including without
6 limitation, any mammal, fish, bird, amphibian, reptile,
7 mollusk, or crustacean; including any part, product, egg,
8 or offspring thereof; or the dead body or parts thereof;

9 (2) “United States” or “State” means the several
10 States of the United States, the District of Columbia,
11 the Commonwealth of Puerto Rico, American Samoa,
12 the Virgin Islands, and Guam;

13 (3) “person” includes any individual, firm, cor-
14 poration, association, partnership, or private entity;

15 (4) “take” means to pursue, hunt, shoot, wound,
16 kill, trap, capture or collect, or attempt to pursue, hunt,
17 shoot, wound, kill, trap, capture or collect;

18 (5) “Secretary” means the Secretary of the In-
19 terior or the Secretary of Commerce as program respon-
20 sibilities are vested pursuant to the provisions of
21 Reorganization Plan Numbered 4 of 1970;

22 (6) “import” means to land on, bring into, or
23 introduce into, or attempt to land on, bring into,
24 or introduce into any place subject to the jurisdiction
25 of the United States, whether or not such landing,

1 bringing or introduction constitutes an importation
2 within the meaning of the tariff laws of the United
3 States;

4 (7) "foreign commerce" includes, among other
5 things, any transaction (1) between persons within
6 one foreign country, or (2) between persons in two
7 or more foreign countries, or (3) between a person
8 within the United States and a person in a foreign coun-
9 try, or (4) between persons within the United States,
10 where the fish and wildlife question are moving in any
11 country or countries outside the United States;

12 SEC. 3. (a) The Secretary shall utilize the land acqui-
13 sition and other authorities of the Migratory Bird Conserva-
14 tion Act (45 Stat. 1433), as amended (16 U.S.C. 715d-3),
15 the Fish and Wildlife Act of 1956 (70 Stat. 1122), as
16 amended (16 U.S.C. 742f), and the Fish and Wildlife Co-
17 ordination Act (72 Stat. 566; 16 U.S.C. 663), as appropri-
18 ate, to carry out a program in the United States of conserv-
19 ing, protecting, restoring, and propagating those species and
20 subspecies of fish and wildlife that he lists as endangered
21 species pursuant to section 2 of this Act.

22 (b) In addition to the land acquisition authorities other-
23 wise available to him, the Secretary is hereby authorized
24 to acquire by purchase, donation, or otherwise, land and

1 water, or interests therein needed to carry out the purpose of
2 this Act relating to the conservation, protection, restoration,
3 and propagation of those species or subspecies of fish and
4 wildlife that he lists as endangered species pursuant to section
5 2 of this Act.

6 (c) Funds made available pursuant to the Land and
7 Water Conservation Fund Act of 1965 (78 Stat. 897), as
8 amended (16 U.S.C. 460), may be used for the purpose of
9 acquiring land and water, or interests therein that are
10 needed for the purpose of conserving, protecting, restoring,
11 and propagating those species or subspecies of fish and wild-
12 life, including migratory birds, that he lists as endangered
13 species pursuant to section 2 of this Act.

14 (d) The Secretary shall review other programs admin-
15 istered by him and utilize such programs in furtherance of
16 the purpose of this Act. All other Federal departments
17 and agencies shall, in consultation with and with the assist-
18 ance of the Secretary, utilize their authorities in further-
19 ance of the purpose of this Act by carrying out programs
20 for the protection of endangered species or subspecies of fish
21 and wildlife and by taking such action necessary to insure
22 that actions authorized, funded, or carried out by them do
23 not jeopardize the continued existence of endangered species.

24 SEC. 4. (a) Notwithstanding any other Act of Con-

1 gress or regulation issued pursuant thereto, and except as
2 authorized by this Act, it is unlawful for any person subject
3 to the jurisdiction of the United States to—

4 (1) import into or export from the United States;

5 or

6 (2) (A) take within the United States, the terri-
7 torial sea of the United States, or upon the high seas;
8 or (B) when so unlawfully taken, to possess, sell, de-
9 liver, carry, transport, or ship, by any means whatso-
10 ever; or

11 (3) deliver, receive, carry, transport or ship in
12 interstate or foreign commerce, by any means what-
13 soever, for commercial purposes; or

14 (4) sell or offer for sale in interstate or foreign
15 commerce any species or subspecies of fish and wild-
16 life which the Secretary has listed as an endangered
17 species presently threatened with extinction pursuant
18 to section 2 of this Act.

19 (b) Whenever the Secretary, pursuant to section 2 of
20 this Act, lists a species or subspecies as an endangered species
21 which is likely within the foreseeable future to become threat-
22 ened with extinction he shall issue such regulations as he
23 deems necessary and advisable to provide for the conserva-
24 tion, protection, restoration, and propagation of such species

1 or subspecies, including regulations making unlawful any of
2 the acts specified by this section.

3 (c) It is unlawful for any person subject to the jurisdic-
4 tion of the United States to import into the United States any
5 fish and wildlife, other than shellfish and fishery products im-
6 ported for commercial purposes or taken in waters under the
7 jurisdiction of the United States or on the high seas for rec-
8 reational purposes, except at a port or ports designated by
9 the Secretary. Any port or ports which have been designated
10 by the Secretary by regulation under the authority of the Act
11 of December 5, 1969 (83 Stat. 276; 16 U.S.C. 668cc-4
12 (d)), and are in effect on the date of enactment shall remain
13 effective under the authority of this Act unless modified by
14 the Secretary. For the purpose of facilitating enforcement
15 of this Act and reducing the costs thereof, the Secretary, with
16 the approval of the Secretary of the Treasury and after notice
17 and opportunity for public hearing, may, by regulation, desig-
18 nate ports and alter such designations. The Secretary, under
19 such terms and conditions as he may prescribe, may permit
20 the importation at nondesignated ports in the interest of the
21 health or safety of the fish and wildlife, or for other reasons, if
22 in his discretion, he deems it appropriate and consistent with
23 the purpose of this subsection.

24 (d) It is unlawful for any person subject to the jurisdic-

1 tion of the United States to attempt or conspire to commit,
2 or to cause to be committed, any offense defined in this
3 section.

4 (e) Any State law or regulation is void to the extent
5 that it would effectively permit or prohibit imports, exports,
6 or transactions in interstate or foreign commerce in a manner
7 inconsistent with subsection (a) hereof, or regulations issued
8 under authority of subsection (b) hereof. This Act shall not
9 otherwise be construed to void any State law or regulation
10 which is intended to conserve and manage migratory, resi-
11 dent, or introduced fish or wildlife, or to permit or prohibit
12 sale of such fish and wildlife: *Provided, however,* That any
13 State law or regulation respecting the taking of an endan-
14 gered species listed pursuant to section 2 of this Act which
15 is less restrictive than the prohibitions provided by this Act
16 shall be void to the extent that such State law or regulation
17 is so less restrictive.

18 SEC. 5. (a) The Secretary may permit, under such
19 terms and conditions as he may prescribe, any act otherwise
20 prohibited by or pursuant to section 4 of this Act when he
21 determines, to his satisfaction, that such act will be under-
22 taken for zoological, educational, or scientific purposes, or
23 to enhance the survival of such fish and wildlife, but only if
24 he finds that such act will not adversely affect the survival

1 of the wild population or the reproductive capacity of the
2 species or subspecies concerned.

3 (b) In order to minimize undue economic hardship to
4 any person who proposes to commit an act prohibited by
5 subsection 4 (a) of this Act under any contract entered
6 into prior to the date of publication in the Federal Register
7 of notice of a proposed listing of an endangered species
8 presently threatened with extinction, the Secretary, upon
9 such person filing an application with him and upon filing
10 such information as the Secretary may require showing to
11 his satisfaction, such hardship, may exempt such person
12 from applicability of subsection 4 (a) : *Provided, however,*
13 *That no such exemption shall be for a duration of more than*
14 *one year from the date of publication in the Federal Regis-*
15 *ter of notice of a proposed listing of the affected species or*
16 *in the quantities which exceed those specified by the Sec-*
17 *retary: And provided further, That the one-year period for*
18 *those species or subspecies of fish and wildlife listed by the*
19 *Secretary as endangered prior to the effective date of this*
20 *Act shall expire in accordance with the terms of section 3*
21 *of the Act of December 5, 1969 (83 Stat. 275).*

22 (c) The prohibitions contained in subparagraph 4 (a)
23 (2) of this Act respecting the taking within a State or its
24 territorial sea, as well as analogous regulations which may be

1 issued pursuant to the authority provided in subsection 4 (b)
2 of this Act, may be suspended by the Secretary in any State
3 which has entered into and, in the judgment of the Secretary,
4 satisfactorily carries out an active program to manage and
5 protect endangered species. The Secretary's determination
6 that such a suspension is warranted shall include a finding
7 that State laws and regulations are framed and enforced in a
8 manner consistent with, and no less stringent than, the pro-
9 hibition and exceptions of this Act. Said suspension shall take
10 effect by notice published in the Federal Register, and it may
11 be revoked whenever the Secretary finds either that the pro-
12 gram to manage and protect such endangered species is not
13 being satisfactorily carried out, or that State laws or regula-
14 tions, or the enforcement thereof, permit acts prohibited by
15 this Act and the exceptions thereto.

16 SEC. 6. (a) (1) Any person who violates any provision
17 of this Act or of any regulation or permit issued hereunder
18 may be assessed a civil penalty by the Secretary of not more
19 than \$10,000 for each such violation. No such penalty shall
20 be assessed unless such person is given notice and opportu-
21 nity for a hearing with respect to such violation. Each viola-
22 tion shall be a separate offense. Any such civil penalty may
23 be compromised by the Secretary. Upon any failure to pay
24 a penalty assessed under this subsection, the Secretary may

1 request the Attorney General to institute a civil action in a
2 district court of the United States for any district in which
3 such person is found, resides, or transacts business to collect
4 the penalty and such court shall have jurisdiction to hear and
5 decide any such action. The court shall hear such action
6 solely on the record made before the Secretary and shall
7 sustain his action if it is supported by substantial evidence on
8 the record considered as a whole.

9 (2) Hearings held during proceedings for the assess-
10 ment of civil penalties authorized by paragraph (1) of this
11 subsection shall be conducted in accordance with section
12 554 of title 5, United States Code. The Secretary may issue
13 subpoenas for the attendance and testimony of witnesses and
14 the production of relevant papers, books, and documents, and
15 administer oaths. Witnesses summoned shall be paid the
16 same fees and mileage that are paid to witnesses in the
17 courts of the United States. In case of contumacy or refusal
18 to obey a subpoena served upon any person pursuant to this
19 paragraph, the district court of the United States for any
20 district in which such person is found or resides or transacts
21 business, upon application by the United States and after
22 notice to such person, shall have jurisdiction to issue an
23 order requiring such person to appear and give testimony
24 before the Secretary or to appear and produce documents

1 before the Secretary; or both, and any failure to obey such
2 order of the court may be punished by such court as a con-
3 tempt thereof.

4 (3) The head of any Federal agency which has issued a
5 lease, license, permit, or other agreement authorizing the
6 grazing of domestic livestock on Federal lands, to any person
7 who is convicted of a criminal violation of this Act or any
8 regulation or permit issued hereunder may immediately
9 modify, suspend or revoke each lease, license, permit or
10 other agreement. The Secretary shall also suspend for a
11 period of up to one year, or cancel any Federal hunting or
12 fishing permits or stamps issued to any person who is con-
13 victed of a criminal violation of this Act or any regulation
14 or permit issued hereunder. The United States shall not be
15 liable for the payments of any compensation, reimburse-
16 ment, or damages in connection with the modification, sus-
17 pension or revocation of any leases, licenses, permits, stamps,
18 or other agreements pursuant to this section.

19 (b) Any person who knowingly commits an act which
20 is declared unlawful by this Act, or any regulation or permit
21 issued hereunder, shall, upon conviction, be fined not more
22 than \$20,000 or imprisoned for not more than one year, or
23 both.

24 (c) The several district courts of the United States, in-

1 cluding the courts enumerated in title 28, United States
2 Code, section 460, shall have jurisdiction over any actions
3 arising under this Act. For the purpose of this Act, Ameri-
4 can Samoa shall be included within the judicial district of the
5 District Court of the United States for the District of Hawaii.

6 (d) (1) The provisions of this Act and any regulations
7 or permits issued pursuant thereto shall be enforced by the
8 Secretary, the Secretary of the Treasury, or the Secretary
9 of the Department in which the Coast Guard is operating, or
10 all such Secretaries. Each such Secretary may utilize, by
11 agreement, with or without reimbursement, the personnel,
12 services, and facilities of any other Federal agency or any
13 State agency for purposes of enforcing this Act.

14 (2) The judges of the district courts of the United States
15 and the United States magistrates may, within their respec-
16 tive jurisdictions, upon proper oath or affirmation showing
17 probable cause, issue such warrants or other process as may
18 be required for enforcement of this Act and any regulation
19 issued thereunder.

20 (3) Any person authorized by the Secretary, the Secre-
21 tary of the Treasury, or the Secretary of the Department in
22 which the Coast Guard is operating, to enforce this Act may
23 execute and serve any arrest warrant, search warrant, or
24 other warrant or civil or criminal process issued by any offi-

1 cer or court of competent jurisdiction for enforcement of this
2 Act. Such person so authorized may search and seize, with
3 or without a warrant, as authorized by law.

4 (4) All fish and wildlife taken, possessed, sold, pur-
5 chased, offered for sale or purchase, transported, delivered,
6 received, carried, shipped, exported or imported contrary to
7 the provisions of this Act, any regulation made pursuant
8 thereto or any permit issued thereunder, and all guns, traps,
9 nets and other equipment, vessels, vehicles, aircraft and other
10 means of transportation used to aid the taking, possessing,
11 selling, purchasing, offering for sale or purchase, transport-
12 ing, delivering, receiving, carrying, shipping, exporting or
13 importing of any fish and wildlife in violation of this Act,
14 any regulation made pursuant thereto or any permit issued
15 thereunder shall be subject to forfeiture to the United States.

16 (5) All provisions of law relating to the seizure, forfeit-
17 ure, and condemnation of a vessel for violation of the customs
18 laws, the disposition of such vessel or the proceeds from the
19 sale thereof, and the remission or mitigation of such forfeit-
20 ure, shall apply to the seizures and forfeitures incurred, or
21 alleged to have been incurred, under the provisions of this
22 Act, insofar as such provisions of law are applicable and not
23 inconsistent with the provisions of this Act: *Provided*, that
24 all powers, rights, and duties conferred or imposed by the
25 customs laws upon any officer or employee of the Treasury

1 Department shall, for the purposes of this Act, be exercised
2 or performed by the Secretary or by such persons as he may
3 designate.

4 (e) The Secretary may require any person importing
5 or exporting fish and wildlife, other than shellfish and fishery
6 products imported for commercial purposes or taken in waters
7 under the jurisdiction of the United States or on the high seas
8 for recreational purposes, to file a declaration with him stat-
9 ing such information as he deems necessary to facilitate en-
10 forcement of this Act.

11 (f) The Secretary, the Secretary of the Treasury and
12 the Secretary of the Department in which the Coast Guard
13 is operating, are authorized to promulgate such regulations
14 as may be appropriate to carry out the purposes of this Act,
15 and charge reasonable fees for expenses to the Government
16 connected with permits authorized by this Act, including
17 processing applications and reasonable inspections, and with
18 the transfer, board, handling, or storage of fish and wildlife
19 and evidentiary items seized and forfeited under this Act.
20 All such fees collected pursuant to this subsection shall be
21 deposited in the Treasury to the credit of the appropriation
22 which is current and chargeable for the cost of furnishing
23 the services. Appropriated funds may be expended pending
24 reimbursement from parties in interest.

25 SEC. 7. (a) In order to carry out the provisions of

1 this Act, the Secretary, through the Secretary of State, shall
2 encourage foreign countries to provide for the protection,
3 conservation and propagation of fish and wildlife, including
4 those species listed as endangered pursuant to section 2 of
5 this Act, and shall encourage bilateral and multilateral agree-
6 ments with such countries for the protection, conservation,
7 and propagation of fish and wildlife. The Secretary shall also
8 encourage persons, taking directly or indirectly fish and wild-
9 life in foreign countries or on the high seas for importation
10 into the United States for commercial or other purposes, to
11 develop and carry out, with such assistance as he may pro-
12 vide, conservation practices designed to enhance such fish
13 and wildlife and their habitat. After consultation with the
14 Secretary of State, the Secretary is authorized to assign
15 or otherwise make available any officer or employee of
16 his department for the purpose of cooperating with foreign
17 countries and international organizations in developing per-
18 sonnel resources and programs which promote the protection,
19 conservation and propagation of fish and wildlife. He is au-
20 thorized to conduct or provide financial assistance for educa-
21 tional training of foreign personnel, in this country or abroad,
22 in the subjects of fish and wildlife management, research, and
23 law enforcement and to render professional assistance abroad
24 in such matters. After consultation with the Secretary of State
25 and the Secretary of the Treasury, as appropriate, the Secre-

1 tary is authorized to conduct or cause to be conducted such
2 law enforcement investigations and research abroad as he
3 deems necessary to carry out the purposes of this Act.

4 (b) The Secretary of Agriculture and the Secretary shall
5 provide for appropriate coordination of the administration of
6 this Act and amendments made by this Act, with the ad-
7 ministration of the animal quarantine laws (19 U.S.C. 1306;
8 21 U.S.C. 101-105, 111-135b, and 612-614) and the Tariff
9 Act of 1930, as amended (section 1306 of title 19). Nothing
10 in this Act or any amendment made by this Act, shall be
11 construed as superseding or limiting in any manner the func-
12 tions of the Secretary of Agriculture under any other law re-
13 lating to prohibited or restricted importations or possession of
14 animals and other articles and no proceeding or determination
15 under this Act shall preclude any proceeding or be considered
16 determinative of any issue of fact or law in any proceeding
17 under any Act administered by the Secretary of Agriculture.

18 (c) Nothing in this Act, or any amendment made by
19 this Act, shall be construed as superseding or limiting in any
20 manner the functions and responsibilities of the Secretary of
21 the Treasury under the Tariff Act of 1930, as amended, in-
22 cluding, without limitation, section 1527 of title 19, United
23 States Code, relating to the importation of wildlife taken,
24 killed, possessed, or exported to the United States in viola-
25 tion of the laws or regulations of a foreign country.

1 SEC. 8. (a) In carrying out the program authorized by
2 this Act, the Secretary shall cooperate to the maximum ex-
3 tent practicable with the several States. Such cooperation
4 may include consultation before the acquisition of any land
5 and water, or interest therein, for the purpose of conserving,
6 protecting, restoring, or propagating any endangered species.

7 (b) The Secretary may enter into agreements with the
8 States for the administration and management of any area
9 established for the conservation, protection, restoration, and
10 propagation of endangered species. Any revenues derived
11 from the administration of such areas under these agreements
12 shall be subject to the provisions of section 401 of the Act of
13 June 15, 1935 (49 Stat. 383), as amended (16 U.S.C.
14 715s).

15 SEC. 9. (a) Subsection 4 (c) of the Act of October 15,
16 1966 (80 Stat. 928), as amended (16 U.S.C.
17 668dd(c)), is further amended by revising the second
18 sentence thereof to read as follows: "With the exception
19 of endangered species listed by the Secretary pursuant to
20 section 2 of the Endangered Species Conservation Act of
21 1973, nothing in this Act shall be construed to authorize
22 the Secretary to control or regulate hunting or fishing or
23 resident fish and wildlife on lands not within the system."

24 (b) Subsection 10(a) of the Migratory Bird Con-
25 servation Act (45 Stat. 1224), as amended (16 U.S.C.

1 715i (a)), is further amended by inserting "or likely with-
2 in the foreseeable future to become threatened with" be-
3 tween the words "with" and "extinction."

4 (c) Subsection 4001 (a) of the Act of June 15, 1935
5 (49 Stat. 383), as amended (16 U.S.C. 715s (a)), is fur-
6 ther amended by inserting "or likely within the foresee-
7 able future to become threatened with" between the words
8 "with" and "extinction" in the last sentence thereof.

9 (d) Subsection 6 (a) (1) of the Land and Water Con-
10 servation Fund Act of 1965 (78 Stat. 903), as amended
11 (16 U.S.C. 460-1-9 (a) (1)), is further amended by in-
12 serting "or likely within the foreseeable future to become
13 threatened with" between the words "with" and "ex-
14 tinction".

15 SEC. 10. (a) Sections 1 through 3 of the Act of Octo-
16 ber 15, 1966 (80 Stat. 926, 927), as amended (16 U.S.C.
17 668aa-668cc) are hereby repealed in their entirety.

18 (b) Sections 1 through 6 of the Act of December 5,
19 1969 (83 Stat. 275-279; 16 U.S.C. 668cc-1 through
20 668c-6) are hereby repealed in their entirety.

21 SEC. 11. There are hereby authorized to be appropri-
22 ated such sums as may be necessary to carry out the pur-
23 poses of this Act.

[Executive Communication No. 442]

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., February 15, 1973.

HON. CARL ALBERT,
Speaker of the House of Representatives,
Washington, D.C.

DEAR MR. SPEAKER: There is enclosed a draft bill "To provide for the conservation, protection and propagation of species or subspecies of fish and wildlife that are presently threatened with extinction or likely within the foreseeable future to become threatened with extinction; and for other purposes."

We recommend that this bill, a part of the environmental program announced today by President Nixon, in his Environment and Natural Resources State of the Union Message, be referred to the appropriate committee for consideration, and that it be enacted.

This proposal addresses the need to identify those species or subspecies which, though not yet threatened with extinction, are likely within the foreseeable future to become so threatened. We are convinced that it is far more sound to take the steps necessary to keep a species or subspecies from becoming endangered than to attempt to save it after it has reached that critical point. Therefore, the bill defines "endangered" (Section 2(c) (1) as meaning any species or subspecies which is either presently threatened with extinction or likely within the foreseeable future to become threatened with extinction. To assure protection of all endangered species commensurate with the threat to their continued existence, we propose to (1) remove the current ceiling imposed by law on acquisition of essential wildlife habitat; (2) prohibit unauthorized import or export, taking, possession, sale, delivery, and transport of species presently threatened with extinction; (3) clarify authorities pertaining to warrantless searches and forfeiture of seized property; and, (4) allow importation at other than designated ports of entry "in the interest of health or safety of fish and wildlife."

The bill follows closely the precedent established by the Congress in 1966 and 1967, when it enacted the first legislation to provide protection for fish and wildlife determined to be threatened with extinction in the United States and abroad. This proposal retains those provisions of the earlier Acts which laid the foundation for this Department's effort to protect endangered species and adds to them the authorities which, as demonstrated by experience, are needed to cope with a continuing decimation of the world's wildlife resources. It provides authority for a new program to be administered jointly by this Department and the Department of Commerce, pursuant to the allocation of responsibilities established by Reorganization Plan No. 4 of 1970.

We urge the Congress to take this further step forward for the protection of our diminishing wildlife resources. The Office of Management and Budget has advised that this legislation is in accord with the President's program.

Sincerely yours,

ROGERS C. B. MORTON,
Secretary of the Interior.

[The legislation transmitted is now H.R. 4758.]

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., March 21, 1973.

HON. LEONOR K. SULLIVAN,
Chairman, Committee on Merchant Marine and Fisheries, House of Representatives,
Washington, D.C.

DEAR MADAM CHAIRMAN: There is enclosed a draft environmental statement (less attachments) that was prepared to accompany the introduction of the "Endangered Species Conservation Act of 1972," in the 92nd Congress. It substantially covers the examination of environmental impact associated with the current legislative proposal and is presently being improved for publication as a final environmental statement.

This statement has been reviewed by 4 Federal and 19 State agencies and is presently being updated and revised to incorporate reviewers' suggestions and current data, as well as the changes in the "Endangered Species Conservation Act of 1973." The benefit of this hearing will also be available to us in the final-

zation process and we anticipate use of the information to come as appropriate for improving the report.

We anticipate it will require about 90 days for this final review to be completed at which time a final environmental statement will be submitted.

Sincerely yours,

W. W. LYONS,

Deputy Assistant Secretary of the Interior.

Enclosure.

DRAFT ENVIRONMENTAL STATEMENT DES 72-44

PROPOSED ENDANGERED SPECIES CONSERVATION ACT OF 1972

(Prepared by Bureau of Sport Fisheries and Wildlife, Department of the Interior)

SUMMARY

(X) Draft () Final Environmental Statement, Department of the Interior, Bureau of Sport Fisheries and Wildlife

1. *Type of action:* () Administrative (N) Legislative.

2. *Brief description of action:* To provide for the conservation, protection, and propagation of species and subspecies of fish and wildlife, domestic and foreign, that are threatened with extinction or likely within the foreseeable future to become threatened with extinction.

3. *Summary of environmental impact and adverse environmental effects:*

Increase the population levels of endangered species to viable levels and allow them to assume their historical role in the environment.

Restrict man's economic and cultural use of endangered species until these species are restored to productive levels.

4. *Alternatives considered:*

Continue sole administration of the endangered species program by the Department of the Interior.

Provide complete protection for all endangered species, even those "likely to become threatened with extinction."

Provide flexible controls for all endangered species.

5. *Comments have been requested from the following:* The Environmental Protection Agency, Department of Agriculture, Department of Commerce, Department of Transportation, Department of Defense, Department of the Interior, National Park Service, U.S. Geological Survey, Bureau of Land Management, Bureau of Outdoor Recreation, Bureau of Reclamation, State Clearing Houses, National Resource Council, Environmental Defense Fund.

6. *Date draft statement made available to the Council on Environmental Quality and the public:*

DESCRIPTION OF THE PROPOSAL

The proposed legislation, the "Endangered Species Conservation Act of 1972," follows closely the precedent established by Congress in 1966 and 1969, when it enacted the first legislation to provide protection for those species of fish and wildlife determined to be threatened with extinction in the United States and abroad. The draft bill retains those provisions of the Acts of October 15, 1966 (80 Stat. 926) and December 5, 1969 (83 Stat. 275) which laid the foundation for the Department of Interior's effort to conserve endangered species, and adds to them the authorities which, as demonstrated by experience, are needed to cope with a continuing decimation of our wildlife resources.

Pursuant to the earlier laws, the Secretary of Interior has authority to promulgate separate lists of native species threatened with extinction and of foreign species or subspecies threatened with worldwide extinction; to regulate the interstate transportation of native species taken contrary to State laws; and to restrict the importation of foreign species which he determines to be threatened with worldwide extinction. In addition, the Secretary has exercised authority to acquire endangered species habitat within funding limits established by Congress. The Department of the Interior through the Bureau of Sport Fisheries and Wildlife has made significant progress under existing authorities, and it can be said with assurance that enactment of endangered species legislation was a milestone in the Nation's attempt to preserve its natural environment.

An important provision of the proposed legislation addresses the need to identify those species and subspecies which, though not yet threatened with ex-

inction within the meaning of the 1966 legislation, are likely within the foreseeable future to become so threatened. We propose to take the steps necessary to keep a species or subspecies from *becoming* endangered rather than attempting to save it after it has reached that critical point. We propose in section 2(c) (1) of the draft bill to define "endangered" as meaning any species or subspecies which is either threatened with extinction throughout all or a significant portion of its range, or likely within the foreseeable future to become threatened with extinction, due to any of the factors enumerated. Subsection 2(c) (2) would require the Secretary to publish and maintain, for simplicity of administration, a single list of endangered species. He would be required, however, to designate in the case of each species or subspecies listed whether such species or subspecies is either threatened with extinction or likely within the foreseeable future to become so threatened. He would indicate, as well, over what portion of the range of such species either condition exists. We have abandoned as unnecessarily cumbersome the current distinction between "native" and "foreign" species.

To assure protection of all endangered species commensurate with the threat to their continued existence, we propose to prohibit the unauthorized import or export, taking, and interstate transportation by any person subject to the jurisdiction of the United States of any species or subspecies determined to be threatened with extinction. These provisions of section 5(a) are intended to provide a degree of regulation consonant with the Congress' recognition of a national interest in the preservation of endangered species and with our responsibility to the international community for the preservation of species which are threatened elsewhere in the world.

By providing the Secretary with discretionary authority to regulate the import, export, taking and interstate transportation of species or subspecies likely within the foreseeable future to become threatened with extinction (section 5 (b)), and by authorizing the delegation to States of authority to regulate the taking of an endangered species in cases where there exists "an active program to manage and protect such endangered species," our bill would allow the adoption of measures most appropriate to the protection of a particular species or subspecies within all or a portion of its range.

In addition to strengthened protection for all animals that are truly endangered, we have proposed the deletion of current ceilings on the acquisition of habitat for endangered species. We have expended nearly all of the \$15 million authorized for this purpose. Increasing land prices have made unrealistic the current annual limit of \$5 million, and the limit (\$2.5 million) on funds available for the acquisition of a single area. Based on our experience with administration of the 1966 and 1969 Acts, we also propose certain refinements of procedural and endorsement provisions. These include provisions that petitions for review of additions to or deletions from the list of endangered species must be accompanied by "substantial evidence," to allow importation at other than designated ports of entry "in the interest of the health or safety of the fish or wildlife," to clarify authority pertaining to warrantless searches and the forfeiture of seized property, and to authorize the suspension of hunting and fishing licenses in addition to other penalties for violations of the Act.

Present law provides for cooperation of the Secretary of Agriculture and the Secretary of Defense in the management and protection of endangered animals found on lands within their jurisdictions. The new legislation would expand the responsibilities and requirements of these endangered animals found on lands within their jurisdictions. The new legislation would expand the responsibilities and requirements of these and other Federal agencies with regard to protection of animals found on both lists. All Federal agencies and departments would be required, when practicable, to administer their programs in such a manner as to support the purpose of the new Act. These departments and agencies would also be required to take "such action as may be necessary to insure that actions authorized, funded, or carried out by them do not jeopardize the continued existence of endangered species." This provision of the proposed legislation is the first piece of substantive law which agencies would have to adhere to in carrying out their programs and duties, as it would prevent them from taking action which would jeopardize the continued existence of endangered species.

The proposed legislation would require that the Secretary consult with and cooperate with the States prior to taking action such as acquiring land or setting up programs for protection and propagation of animals on either list. It would make the taking of endangered species a Federal offense for the first time and

would in effect remove listed species from the States' jurisdiction. However, the Secretary would be authorized to enter into agreements with the States for management and administration of programs or areas established for the conservation, restoration, protection, or propagation of endangered animals. Thus the States would play a major role in carrying out the purpose of the Act and in its administration. The prohibition against taking or importing would not apply to American Indians, Aleuts or Eskimos residing within the jurisdiction of the United States insofar as their taking of a listed animal was for personal consumption or for ritual purposes. Any State or interested person who wished to question the listing of a species or the failure to list a species would be entitled to have the Secretary review the case upon the presentation of substantial evidence.

Under the new legislation the Secretary of the Interior would be authorized to consult with and work with foreign nations, through the Secretary of State, in the interest of promoting worldwide effort to protect and propagate listed animals. Such authorization would include exchange of technical and scientific knowledge, agreements as to management and protection, and an effort to persuade foreign powers to take measures to protect and conserve those species.

For the purposes of this statement the term "Secretary" means Secretary of Interior except where program responsibilities have been vested in the Secretary of Commerce pursuant to the provisions of Reorganization Plan No. 4 of 1970. [The Reorganization Plan provided for transfer to the Secretary of Commerce of "all functions vested by law in the Bureau of Commercial Fisheries of the Department of the Interior or in its head, together with all functions vested by law in the Secretary of the Interior or the Department of the Interior which are administered through that Bureau or are primarily related to the Bureau." The endangered species authorities vested in the Secretary of the Interior by the Acts of October 15, 1966 and December 5, 1969 have been exercised by the Bureau of Sport Fisheries and Wildlife. None have been assumed by the Department of Commerce pursuant to Reorganization Plan No. 4, presumably because they were neither administered through the Bureau of Commercial Fisheries or primarily related to that Bureau.]

DESCRIPTION OF THE ENVIRONMENT

Endangered species occupy the total spectrum of the Earth's habitats from the arctic regions to the equator, including all the eco-types from alpine to marine. Man's development of these various areas is the major reason some species are threatened with extinction. The modification or prevention of further development of specific habitats and the initiation of action to otherwise protect or enhance the well-being of endangered species, will involve areas in most of the Earth's ecosystems, particularly natural areas that may be encroached upon by man.

The proposed legislation places all endangered species within the jurisdiction of the United States under Federal control and directs the Secretary to take action to conserve, protect, and propagate these species. Hence, the environment most directly involved is that area within United States jurisdiction. Generally, this action will result in the maintenance of the habitat, now occupied by endangered species in a natural condition. Present activities now conducted in these areas that do not threaten the existence of the endangered species occupying the area would probably not be affected.

The environment of foreign countries and the high seas would also be involved because this legislation could effectively stop or otherwise modify the taking of endangered species by foreign business dependent on species taken within their country or on the high seas, thereby modifying the environment containing the species in question.

ENVIRONMENTAL IMPACT OF THE PROPOSED ACTION

Implementation of the proposed legislation will prevent or regulate within U.S. territory the taking of species found on the endangered species list. It will initiate administrative, economic, and legal actions designed to increase the population levels of those species found on the list wherever they may live, and restore them to a meaningful role in their environment. Thus, the main environmental impact will be that which these species have on their ecosystem. All species play a role in maintaining the dynamic equilibrium of their environment and the restoration of these species to their natural roles will be a positive

influence on the natural environment. Many of these species play key roles in their respective ecosystems and their removal could cause significant changes in that ecosystem. For instance in a balanced ecosystem a predator may be responsible for limiting the population of a herbivore which in turn limits the growth of certain plants. The extinction of the predator cause an increase in the population of herbivores which in turn decimates their food supplies. This results in a threat to their existence and all the other animals depending on similar forage either for refuge or food. The result would be to depress these populations and further disrupt the natural condition.

How this proposed legislation would impact the human animal will be somewhat varied depending on the particular interests of each person and the species in question. The conservation and restoration of some species could mean economic, social or aesthetic gain for one and a similar loss to another. The general public emphathizes with the purposes of this legislation and its implementation would be a favorable impact on their environment. The historical and scientific value of these species is also generally recognized and their maintenance at viable population levels will be a favorable impact on man's environment in this respect. Insofar as habitat improvement for the benefit of one species generally enhances the environment for other species, this legislation will improve the environment for all species includein *Homo sapiens*.

The primary environmental effect will not be to change the environment but to prevent change and restore the natural order. To conserve and protect some endangered species it will be necessary to set aside certain areas and maintain them for the use of the species in question. Generally, these areas will not be available for commercial uses such as agriculture. This will adversely affect those groups interested in developing the area; however, these preserve will expand the public domain and may provide additional areas for recreational use.

There are adverse effects that are generally restricted to unique human groups and are related to the taking of these species; i.e., hunting, fishing, trapping, outfitting, guiding and the manufacturing, importing and exporting of these species or goods made from them. As an example, the listing of various wild cats will have an economic impact on several of the above activities. Hunters, both commercial and sport, of these animals would not be allowed to take these animals in U.S. territory and they would not be allowed to import them into the U.S. Businesses dependent on the outfitting or guiding of these hunters will be depressed. Hides from these animals will be unavailable to furriers whose business will be affected adversely. Shippers and retailers of these products will also be affected.

The listing of certain species of whales has put the last remaining commercial whale fishing and processing company operating within U.S. territory out of business and depressed foreign markets by restricting the importation of whale products. Restoration of these species could ultimately lead to the return of these populations to a productive capacity and a resumption of sporting or commercial uses.

Historically, some species have disrupted man's development and use of segments of the environment and some of these species are on the endangered species list. Increasingly, the numbers and distribution of these species would increase the depredations of these species. As an example, some herbivores presently on the endangered list could compete with sheep or cattle for forage and have an adverse effect on this industry. Conversely, if these herbivores reduced plants that compete for space with cattle or sheep forage, a benefit would be realized. Improved management techniques will reduce the depredation referred to above, but probably not eliminate it.

The physical intrusion of man into the territory of some species, particularly at critical times in their life history, so disrupts their activity that it poses a threat to their existence. The brown pelican during its nesting period is a case in point. The physical intrusion of any large animal may so disturb the nesting birds that they will abandon the nest. This must be prevented if the species is to survive. The prevention of man's interference at these times is a restriction that may be considered an adverse effect.

The inclusion on the list of species or subspecies occurring in foreign nations will have the effect of involving the United States in an effort at restoration and protection of animals on a worldwide basis. The authority granted to the Secretary to negotiate with and assist foreign powers in connection with a program of conserving endangered species will result in greater availability of technical and scientific knowledge of endangered species and environmental conditions throughout the world. This authority would also promote multilateral agree-

ments for the protection and management of species considered endangered. Controlled use of these animals would be one result of the proposed legislation which would be of benefit to mankind.

MITIGATING MEASURES

There are several provisions of the proposed legislation which would allow for mitigation in some situations. The Secretary would have the authority to grant one year permits, to any person who would suffer under economic hardship, for the importing, exporting, taking or transporting of species or subspecies appearing on the lists. The Secretary would also be allowed to authorize the taking, importing etc. of listed species for specific purposes such as scientific or educational. Such authority would have a mitigating effect on the listing of a species with regard to the economic and cultural uses presently being made of animals.

Further mitigating measures found in the proposed action deal with removal of jurisdiction over listed species from the States. The new amendments provide for the delegation of regulatory and management authority to a State by the Secretary. It also provides for consultation with the States in regard to the listing of animals and for agreements concerning, and utilization of State facilities and resources in carrying out the endangered species conservation program.

The Secretary's authority to make regulations dealing with those species likely to become threatened with extinction would allow for less stringent treatment of species appearing on that list. The effect could thus be controlled by the Secretary in such a manner as to maximize protection of the animal and at the same time support continued use of the animal for commercial, sporting, or cultural purposes.

Joint jurisdiction over enforcement of the proposed legislation will provide a mitigating measure in that the interest of commercial fisheries and other areas within the jurisdiction of the Department of Commerce will be represented and protected. Regulation and management of certain species by both Departments will result in consideration for those commercial interests centered around the taking of them.

No specific measures are included in the proposed legislation to mitigate environmental effects. In most cases mitigation would mean compromise of the thrust of the action to save endangered species. However, where impact occurs on a species by species basis mitigating measures can be considered if the impact has undesirable side effects and no satisfactory alternative to the individual management action is available.

ADVERSE EFFECTS WHICH CANNOT BE AVOIDED SHOULD THE PROPOSAL BE IMPLEMENTED

1. Economic and cultural benefits derived from the taking of endangered species within U.S. territory may be lost (with the exception of those that accrue to the Aluets, Eskimo and American Indians) until the species in question is restored to harvestable population levels.
2. Economic benefits derived from the taking of animals in foreign countries and on the high seas may be depressed.
3. Man's activities in the habitat occupied by endangered species may be restricted and in some cases eliminated.
4. Restored species may compete with man for space and other resources.

RELATIONSHIP BETWEEN LOCAL, SHORT-TERM USE OF MAN'S ENVIRONMENT AND THE MAINTENANCE AND ENHANCEMENT OF LONG-TERM PRODUCTIVITY

The relationship between short-term and long-term productivity will vary according to the individual species' habitat requirements. The endangered Santa Cruz long toed salamander is confined to one small area on the coast of California. A number of warm springs in the desert area of California and Nevada each has its own species of pupfish found nowhere else. A characteristic of each of these species is a very restricted range and delicate species requirements. In all of these cases local short-term use of the restricted habitat and long-term productivity of that habitat are exactly the same.

The entire whooping crane population, now numbering 59, nests in Wood Buffalo National Park in Canada and winters in and around Aransas National Wildlife Refuge on the Gulf coast of Texas. Successful restoration of the whooping crane will result in dispersal of a larger population over a wider part of the midconti-

nent. Dispersal is necessary to avoid subjection of the entire population to one gigantic disaster at the Aransas wintering ground. Cost of the program in terms of the short-term use of the Aransas wintering ground is very low compared to the long-term productivity of restoration of the bird over a wider area.

In another case, certain migratory or mobile species are constantly on the move and are not susceptible to management on any one area even part of the year. In this case the cost in terms of short-term use of a wide area is quite high compared to long-term productivity in terms of restoration over that same wide area.

By this reasoning we judge that the relationship between local short-term use of man's environment and maintenance of long-term productivity will vary greatly according to species.

Continued short-term use of a species that is threatened with extinction could force that animal to or over the brink of extinction. Under this use, the benefit from and enjoyment of the animal would be confined to relatively few people for the short period that the species continues to exist. On the other hand, cessation of the consumptive use of the species may result in survival of the animal and make it available for the enjoyment of more people over a longer period of time. If restoration results, the species may actually return to the point where consumptive use may be employed again.

Through evolution certain animals have developed rather specific relationships with other plants or animals in the ecosystem. For example, the Florida Everglades kite is very specific in its choice of food—the apple snail. The black-footed ferret appears to very much prefer the prairie dog for its food. Destruction of either of these food species could very well doom the species that depends upon such a specific food item. Destruction of a species in the short run could very well affect or destroy other species in the long run ultimately damaging or eliminating an entire ecosystem.

IRREVERSIBLE AND IRRETRIEVABLE COMMITMENTS OF RESOURCES WHICH WOULD BE INVOLVED IN THE PROPOSED ACTION SHOULD IT BE IMPLEMENTED

The purpose of the proposed legislation is to protect, conserve, and propagate a renewable resource. The methods employed to reach this goal will not require the irreversible or irretrievable commitment of natural resources.

ALTERNATIVES

1. The proposed legislation provides for the Secretary of Commerce to assume partial jurisdiction for some marine species including seals, whales, oceanic fishes, certain anadromous fishes, marine mollusks and crustaceans. An alternative to the proposed action would be to continue sole administration of the endangered species program by Interior, the Department charged with primary responsibility for protection of the Nation's wildlife resources.

The Fish and Wildlife Act of 1956 requires that the Secretary of Commerce "develop and recommend measures which are appropriate to assure the maximum sustainable production of fish and fishery products and to prevent unnecessary and excessive fluctuations in such production." This important objective would require, of course, that he take measures to conserve commercial fishery resources for the purpose of continued utilization. It is not difficult to imagine, however, that a conflict might arise were the same agency responsible for protection of endangered species and "the maximum sustainable production of fish and fishery products." This inherent contrariety was evidenced during recent discussions between the Department of the Interior and the Department of Commerce as to the advisability of listing certain species of whales. The judgments required in administration of an endangered species program must be made solely on the basis of scientific evidence available as to the relative well being of that species and not on the commercial value of that species.

The Department of Commerce is concerned that continued administration of this program by Interior would jeopardize its prerogative for management of commercial fishery resources. The proposed legislation retains the definition of "fish and wildlife" provided by the 1966 and 1969 legislation. No species not already authorized to be listed as "threatened with extinction" could be listed under the bill as "endangered." The circumstances under which such species might be listed and the sanctions imposed as the result of listing, however, are broadened. Under existing authority, and pursuant to the draft legislation, a species could be listed when conventional management has failed to prevent "its overutilization for commercial, sporting, scientific, or educational purposes," or when deple-

tion is the result of "the inadequacy of existing regulatory mechanisms." It is expected that selective imposition of the sanctions authorized by this bill would provide an incentive for sound management by the States and other nations.

The administration of the endangered species program as proposed by this alternative would not preclude active participation by other Federal agencies, including the Department of Commerce. Section 2(c)(1) of the draft bill provides for consultation by the Secretary with other interested Federal agencies prior to his designation of an endangered species. Section 3(d) requires that all other Federal departments and agencies "utilize, where practicable, their authorities in furtherance of the purpose of this Act by carrying out programs for the protection of endangered species. . . ." Further, other agencies would be depended upon for assistance in enforcing the Act.

2. The proposed legislation differentiates between two general levels of "endangerment": those species threatened with extinction and those species likely within the foreseeable future to become threatened with extinction. Protection varies from a complete prohibition on the import, export, taking and interstate transportation of species in the first category to a more flexible regulating of controls for species in the second according to their need.

An alternative to those proposal might provide complete protection for all endangered species, even those "likely to become threatened with extinction." This would foreclose management alternatives that might be beneficial to the species in question such as the selective taking of rams that dominate a herd and prevent breeding by younger rams which are more likely to successfully produce offspring. In addition, those populations that can be exploited at the present time but are threatened with extinction from loss of habitat would also be adversely affected by such an alternative.

Another alternative might provide flexible controls for all species listed. It is clear that once a species is listed as an "endangered species" each individual of that species is important and it should be protected. Under this alternative political pressure and administrative procedures could cause a loss of valuable time between recognition of the danger and the initiation of action.

3. An alternative would be to continue operating under existing law. The present authority for the Endangered Species Program of the Department of the Interior is contained in the Endangered Species Act of 1966 and 1969. These Acts provide for two endangered species lists—one of native species threatened with extinction and one of foreign species or subspecies threatened with worldwide extinction. To place a species on either list one must demonstrate that it is threatened throughout its range. The proposed legislation provides for protection and management of both a species that may be threatened in only a significant portion of its range and one whose population is depleted but not yet threatened with extinction.

The present law leaves jurisdiction for protection of resident endangered species to the State in which the animal occurs. In some cases where States have not extended legal protection to species or subspecies that appear on the Secretary's list, the Secretary cannot prohibit interstate shipment. The proposed legislation would automatically grant protection of the Federal Act to any species or subspecies when it is added to the Secretary's list.

Existing law limits land acquisition authority for endangered species under the Land and Water Conservation Fund Act to \$2.5 million dollars for any one area, \$5 million in any one year, and a total of \$15 million. The proposed legislation would remove these ceilings. The amount of money that could be spent on habitat acquisition for endangered species from the Land and Water Conservation Funds would be established through the annual budget process.

The Act of 1969 limits the authority of the Secretary in prohibiting imports of endangered species to those imported from a foreign country; i.e., not from the high seas. The proposed legislation authorizes the Secretary to prohibit any imports of endangered species and to control the taking by a U.S. citizen on the high seas. This would allow protection of the polar bear on the pack ice, for instance, if it was declared an endangered species.

COORDINATION IN THE REVIEW OF THE DRAFT ENVIRONMENTAL STATEMENT

Copies have been sent to the following for review and comment:

Department of Agriculture, Dr. T. C. Byerly, Office of the Secretary, Washington, D.C.

Department of Commerce, Dr. Sidney R. Galler, Deputy Assistant Secretary for Environmental Affairs, Washington, D.C.

Department of Transportation, Mr. Herbert F. DeSimone, Assistant Secretary for Environment and Urban Systems, Washington, D.C.
 Environmental Protection Agency, Mr. Sheldon Meyers, Office of Federal Activities, Washington, D.C.
 Department of Defense, Mr. Donald Lawyer, OASD/HNE—Room 3D171, Pentagon, Washington, D.C.
 Department of the Interior, National Park Service; U.S. Geological Survey; Bureau of Outdoor Recreation; Bureau of Land Management; Bureau of Reclamation.
 Clearinghouses—all 50 States—Puerto Rico and Virgin Islands.
 Environmental Defense Fund, Inc., Mr. William Butler, 1712 N Street NW., Washington, D.C.
 Natural Resources Council of America, Mr. Philip Douglas, 1412 16th Street NW., Washington, D.C.

DEPARTMENT OF AGRICULTURE,
 OFFICE OF THE SECRETARY,
 Washington, D.C., March 23, 1973.

HON. LEONOR K. SULLIVAN,
Chairman, Committee on Merchant Marine and Fisheries, House of Representatives, Washington, D.C.

DEAR MADAM CHAIRMAN: This is in response to your request for a report on H.R. 37, H.R. 2735, and H.R. 4758 bills "To provide for the conservation, protection, and propagation of species or subspecies of fish and wildlife that are threatened with extinction or likely within the foreseeable future to become threatened with extinction; and for other purposes."

The Department of Agriculture recommends that H.R. 4758, the Administration's proposed "Endangered Species Conservation Act of 1973," be enacted in lieu of H.R. 37 or H.R. 2735.

In general, the bills follow closely the provisions of the Endangered Species Conservation Act of 1969 (16 U.S.C. 668aa-668cc; 668cc-1 through 668cc-5). They would strengthen the earlier legislation in part by broadening the definition of endangered species to include species or subspecies of fish or wildlife that may within the foreseeable future be likely to become threatened with extinction; and by prohibiting the exporting, taking, possession, sale, and interstate transportation of endangered species.

The Department of Agriculture strongly supports the objectives of the bills to protect endangered fish and wildlife. In furtherance of the existing Endangered Species Conservation Act, the Forest Service of this Department is continuing to develop management plans that would protect and enhance identified areas of endangered species habitat located on lands within the National Forest System.

Although many of the provisions of the three bills are quite similar, we recommend that H.R. 4758 be enacted. We believe the penalties and enforcement provisions of H.R. 4758 are more comprehensive and stronger than the related provisions of the other two bills. Further, we believe that it would not be appropriate for the Secretary of Agriculture to initiate a program of direct assistance to private landowners as provided by section 10(c) of H.R. 37 and H.R. 2735. If a need to assist private landowners is identified, we believe such programs could be better accomplished by strengthening the role of the States in this area.

The Office of Management and Budget advises that there is no objection to the presentation of this report, and that enactment of H.R. 4758 would be in accord with the President's program.

Sincerely,

J. PHIL CAMPBELL,
Under Secretary.

U.S. DEPARTMENT OF THE INTERIOR,
 OFFICE OF THE SECRETARY,
 Washington, D.C., March 23, 1973.

HON. LEONOR (MRS. JOHN B.) SULLIVAN,
*Chairman, Committee on Merchant Marine and Fisheries,
 House of Representatives, Washington, D.C.*

DEAR MADAM CHAIRMAN: Your Committee has requested the views of this Department on H.R. 37, a bill "To provide for the conservation, protection, and

propagation of species or subspecies of fish and wildlife that are threatened with extinction or likely within the foreseeable future to become threatened with extinction, and for other purposes" and H.R. 2169, a bill "To implement the Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere, and for other purposes." We note that there is also pending before your Committee H.R. 4758, the Administration's proposed bill, "To provide for the conservation, protection, and propagation of species or subspecies of fish and wildlife that are presently threatened with extinction or likely within the foreseeable future to become threatened with extinction; and for other purposes." In addition our comments will be directed to H.R. 3310, H.R. 3396 and H.R. 3795, bills identical to H.R. 37 and similar bills H.R. 470, H.R. 471, H.R. 1461, H.R. 1511, H.R. 2669 and H.R. 4755.

We recommend the enactment of H.R. 4758, the Administration's proposed "Endangered Species Conservation Act of 1973."

Each of these bills, except H.R. 2169, would, in some way, amend the existing laws regarding the protection and conservation of endangered species of fish and wildlife. Pursuant to these earlier laws, which have been codified as the Endangered Species Conservation Act of 1969 (16 U.S.C. 668aa-668cc; 668cc-1 through 668cc-5), and related Acts, the Secretary of the Interior has authority to promulgate separate lists of native species threatened with extinction and of foreign species threatened with worldwide extinction; to regulate the interstate transportation of native species taken contrary to State laws, and to restrict the importation of foreign species which he determines to be threatened with worldwide extinction. In addition, the Secretary has exercised authority to acquire endangered species habitat within funding limits established by Congress.

The Bureau of Sport Fisheries and Wildlife of this Department has made significant progress under existing authorities, and it can be said with assurance that enactment of endangered species legislation was a milestone in the Nation's attempt to preserve its natural environment. There exists no precise measure of our success, due primarily to a lack of technical information. Nearly 400 species are currently listed as endangered, either in the United States or worldwide, and there are examples or species which, though once threatened with extinction, are now thought to have been rescued from ultimate destruction. There threat remains, however, and can be expected to grow in intensity as habitat is converted to human use and the environment is despoiled.

These bills would, among other things, expand the existing program for the conservation and protection of fish and wildlife resources by providing earlier identification of threatened species, authorizing necessary protective measures, prohibiting the taking of endangered species, and expanding the prohibition against trafficking in such species. Under the bills, the development and administration of the new program would be the joint responsibility of the Department of the Interior and the Department of Commerce, pursuant to the allocation of responsibilities by Reorganization Plan No. 4 of 1970.

For the sake of convenience we will summarize the provisions of H.R. 4758 and explain the most significant differences between it and the other bills.

H.R. 4758 addresses the need to identify those species or subspecies which, though not yet threatened with extinction, are likely within the foreseeable future to become so threatened. In so doing, it provides the means for taking the steps necessary to keep a species or subspecies from becoming endangered rather than attempting to save it after it has reached that critical point. Therefore, the bill defines "endangered" (Section 2(c) (1)) as meaning any species or subspecies which is either presently threatened with extinction or likely within the foreseeable future to become threatened with extinction. To assure protection of all endangered species commensurate with the threat to their continued existence, H.R. 4758 would (1) remove the current ceiling imposed by law on acquisition of essential wildlife habitat; (2) prohibit unauthorized import or export, taking, possession, sale, delivery, and transport of species presently threatened with extinction; (3) clarify authorities pertaining to warrantless searches and forfeiture of seized property, and (4) allow importation at other than designated ports of entry "in the interest of health or safety of fish and wildlife." H.R. 4758 also provides authority for this program to be administered jointly by this Department and the Department of Commerce, pursuant to the allocation of responsibilities established by Reorganization Plan No. 4 of 1970. For those species or subspecies likely within the foreseeable future to become threatened with extinction, H.R. 4758 would provide discretionary authority to the Secretary to regulate the import, taking, and interstate transportation of those animals. The type and degree of control exercised in this latter instance would depend on the circum-

stances of each species and could include a complete or partial ban if deemed appropriate.

H.R. 37, and the other bills identical to it, are in many instances similar to H.R. 4758. However, while we support the general purposes of these bills we prefer H.R. 4758 for the following reasons:

1. We believe it desirable to include, within the definition of "take" the terms "pursue," "shoot," "wound," "trap," and "collect."

2. We believe that the separate definitions of "fish" and "wildlife" could raise ambiguities as to what animals are included under each term. Another problem is that the definition of "wildlife" in H.R. 37 includes the nebulous reference to any "other animal". It is uncertain as to what this term is meant to include. Consequently, we believe the term used in H.R. 4758, "fish and/or wildlife" defined to mean "any wild animals, whether or not raised in captivity, including without limitation, any mammal, fish, bird, amphibian, reptile, mollusk, or crustacean, including any part, product, egg, or offspring thereof, or the dead body or parts thereof", is more appropriate.

3. Under Subsection 4(b) of these bills, we anticipate a potential legal problem relating to the phrase "not less than annually". This language would appear to require the Secretary to establish a new list or reestablish the existing list, assuming that no changes were appropriate at that time, at least once every year. It is not inconceivable then, that if, through some circumstance, the Secretary failed to republish a list for which no changes were appropriate, a defendant in a civil or criminal proceeding under this Act would claim the defense that the list had legally lapsed. This problem would be avoided under H.R. 4758 which stipulates that the Secretary publish a list and allows him to revise such list "from time to time".

4. While we concur with the prohibition of acts specified under Subsection 7(a) of H.R. 37 applying to species or subspecies presently threatened, and those referred to under Subsection 7(b) applying to species or subspecies, likely within the foreseeable future to become threatened, we believe that certain additional acts should be specifically prohibited. Accordingly, we favor the more comprehensive language in Sections 4(a) and 4(b), of H.R. 4758.

5. Within the definitions section of H.R. 37, Section 3, we note the inclusion of the term "Federal lands". Considering that the prohibitions apply to taking "within the United States", we do not see the need for a separate definition of "Federal lands".

6. We note that under Subsection 10(a)(2) of H.R. 37, the Secretary is directed to convene, through the Secretary of State, an international ministerial meeting for the purpose of signing an international convention on the conservation of endangered species. Since an international meeting, recently held in Washington, D.C., resulted in agreement on a draft treaty prepared in conjunction with the State Department, we do not believe such a provision is appropriate.

7. We do not believe that Section 11 of these bills is necessary or desirable since the Smithsonian Institution already has authority to conduct this kind of a review and the authorization of a specific appropriation merely serves to put a ceiling on the amount of funds to be expended for this purpose. The recently concluded "Convention on International Trade on Endangered Species of Wild Fauna and Flora," signed on March 3, 1973, in Washington, D.C., recognizes the critical role of flora in our total ecosystem. This Department, the Departments of Commerce and Agriculture, and the Smithsonian Institution are cooperating to develop a conservation program to preserve endangered flora pursuant to that Convention.

The above comments on H.R. 37, and the other bills identical to it, also pertain to H.R. 470, H.R. 471, and H.R. 2669, and to H.R. 1511 and H.R. 2735. H.R. 1461 and H.R. 4755, identical bills, are different from H.R. 37. However, these bills are identical to the endangered species bill developed last year and introduced in the 92d Congress as H.R. 13081. While H.R. 1461 and H.R. 4755 are, therefore, quite similar to the current Administration proposal discussed above. H.R. 4758, we believe that the refinements make H.R. 4758 preferable to the earlier version. Consequently, we recommend against enactment of either H.R. 1461 or H.R. 4755.

H.R. 2169 would implement the Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere and amend the original 1966 Endangered Species Act. This bill would prohibit any person within any place subject

to the jurisdiction of the United States from hunting, capturing, killing, taking, transporting, selling, or purchasing any fish or wildlife listed in the Annex to the Convention. H.R. 2169 also provides that in submitting the list of species for the Annex, the Secretary of the Interior shall include the species found by him to be rare or endangered under the terms of the 1966 Endangered Species Act. While this Department subscribes to the objectives of H.R. 2169, we believe that it offers only a partial solution to the problems associated with the preservation and conservation of endangered wildlife. We therefore, recommend the enactment of H.R. 4758 as a comprehensive approach to the protection, preservation and conservation of these animals.

The Office of Management and Budget advises that there is no objection to the presentation of this report and that enactment of H.R. 4758 would be in accord with the program of the President,

Sincerely yours,

DOUGLAS P. WHEELER,
Acting Assistant Secretary of the Interior.

SMITHSONIAN INSTITUTION,
Washington, D.C., April 23, 1973.

HON. LEONOR K. SULLIVAN,
*Chairman, Committee on Merchant Marine, and Fisheries,
U.S. House of Representatives,
Washington, D.C.*

DEAR MADAM CHAIRMAN: Thank you for the opportunity to comment on H.R. 37, a bill "To provide for the conservation, protection, and propagation of species or subspecies of fish and wildlife that are threatened with extinction or likely within the foreseeable future to become threatened with extinction, and for other purpose."

H.R. 37 is substantially the same as H.R. 4758, the latter of which the Smithsonian Institution already has reported on favorably to your Committee. For the reasons set forth in that Report, the Institution endorses the purposes and objectives of H.R. 37, which it is believed will improve substantially the ability of the United States to protect and preserve threatened species or subspecies of fish and wildlife.

The principal provision in H.R. 37 which deviates from H.R. 4758, and in which the Smithsonian Institution has a direct interest, is Section 11, entitled "Endangered Flora." This section provides that:

"The Secretary of the Smithsonian Institution, in conjunction with other affected agencies, is authorized and directed to review (1) species and subspecies of endangered plants, trees, and other flora, and (2) methods of providing adequate protection to such species and subspecies, and to report to Congress, within one year after the date of the enactment of this Act, the results of such review. For the purposes of this section, there is authorized to be appropriated \$250,000."

It is believed that the Smithsonian Institution already has general authority to accomplish these objectives without specific legislation. Also, it may be of interest to the Committee to know that the Smithsonian Institution has been conducting, on a limited basis, research on endangered flora with a view to compiling a list of domestically and internationally endangered flora.

The Smithsonian Institution hopes that the Committee will act favorably on legislation to give greater protection throughout the world to species threatened with extinction, or which are likely within the foreseeable future to become so threatened. The principles embodied in the pending legislation demonstrate the increased awareness of the American public in the need to treat the future existence of other living creatures, which so often depends on human decisions, with care, respect, and foresight.

The Office of Management and Budget has advised that there is no objection to the presentation of this report to the Congress.

Sincerely yours,

S. DILLON RIPLEY, *Secretary.*

SMITHSONIAN INSTITUTION,
Washington, D.C., April 23, 1973.

HON. LEONOR K. SULLIVAN,
Chairman, Committee on Merchant Marine and Fisheries,
U.S. House of Representatives,
Washington, D.C.

DEAR MADAM CHAIRMAN: Thank you for the opportunity to comment on H.R. 4758, the Administration's proposal "To provide for the conservation, protection, and propagation of species or subspecies of fish and wildlife that are presently threatened with extinction or likely within the foreseeable future to become threatened with extinction; and for other purposes."

There are many salient points of this proposed legislation among which are the following: The act would deal not simply with endangered species but with species that are presently threatened with extinction and those which, within the foreseeable future, are likely to become threatened with extinction throughout all or a significant portion of its range. The Secretaries of the Departments of the Interior and Commerce shall be responsible, according to their presently existing authority, for the determination of which species or subspecies are endangered, either by being presently threatened by extinction, or are likely within the immediate future to be threatened with extinction. The appropriate Secretary shall publish in the *Federal Register* a list of endangered species which he shall indicate are either presently threatened with extinction or are likely to be so threatened in the foreseeable future. Further, in either case the Secretary shall indicate over what portion of the range of such species this threat of extinction exists. The list may be revised by the Secretary from time to time, by regulation, and he shall entertain consideration of revision of the list upon appropriate petition of any interested person. Further, provisions are made in the bill for complementing and encouraging non-conflicting State laws or regulations designed to protect endangered species, to accommodate to a certain extent economic hardships imposed by the act, and to impose a meaningful civil penalty by the Secretary for violation of the act and subsequent regulations.

The Smithsonian Institution endorses the purposes of the Administration's proposal which will improve substantially the ability of the United States to protect and preserve threatened species or subspecies of fish or wildlife. In effect the bill offers a great deal of flexibility by providing that a species may be placed on the list if the Secretary determines that it is presently threatened with extinction, not only in all of its natural range, but in a significant part thereof, as well. Consequently the present requirement of worldwide endangerment would be discarded. More flexibility in management of species is provided by incorporation of the concept of "depleting" species which provides for a range of measures to preserve species likely to be threatened with extinction. This type of flexibility would allow the taking of corrective steps well in advance of the time when only desperation measures will save or restore a given species or subspecies.

Section 2(b) emphatically directs Departments and Agencies of the Federal Government to shift from a passive responsibility into an active role of seeking to protect endangered species. The Institution believes as much effort as possible should be directed toward supporting this exceedingly important provision.

It is recognized that the list of endangered species may well be expanded pursuant to this proposed legislation. The Smithsonian, through its own staff of scientists, is prepared to provide its expert assistance in this respect to the Department of the Interior, or the Department of Commerce.

You may be interested to know that in my capacity as President of the International Council for Bird Preservation, I am currently working in collaboration with the Bureau of Sport Fisheries and Wildlife on the preparation of an illustrated manual for easy identification of species presently threatened with extinction and those threatened within the foreseeable future. A manual such as this may provide valuable assistance to the customs officers of foreign nations, United States enforcement officers, and to State officials.

The Smithsonian Institution hopes that the Committee will act favorably on H.R. 4758 to give greater protection throughout the world to species threatened with extinction, or which are likely within the foreseeable future to become so threatened. The principles embodied in the pending legislation demonstrate the increased awareness of the American public in the need to treat the future

existence of other living creatures, which so often depends on human decisions, with care, respect, and foresight.

The Office of Management and Budget has advised that there is no objection to the presentation of this report to the Congress and that enactment of H.R. 4758 would be in accordance with the President's program.

Sincerely yours,

S. DILLON RIPLEY, *Secretary.*

DEPARTMENT OF STATE,
Washington, D.C., March 23, 1973.

HON. LEONOR K. SULLIVAN,
Chairman, Committee on Merchant Marine and Fisheries, House of Representatives, Washington, D.C.

Dear MADAM CHAIRMAN: Thank you for your letters of February 7, March 5 and March 7, 1973, affording this Department the opportunity to comment on HR 37, HR 2735, HR 4755 and HR 4758. bills to provide for the conservation, protection and propagation of species or subspecies of fish and wildlife that are presently threatened with extinction or likely within the foreseeable future to become threatened with extinction; and for other purposes.

The Department favors the enactment of HR 4758, which was transmitted to the Congress in conjunction with the President's State of the Union Message on Natural Resources and Environment of February 15, 1973. This bill has the following advantages over the bills cited above.

Sec. 10(a) (2) of HR 37 and Section 10 (a) (1) of HR 2735 call for the Secretary of State to convene an international meeting on fish and wildlife. The meeting took place in February; HR 4758 in effect takes note of this by not calling for it to be convened.

Sec. 7 of HR 37 and HR 2735 and Sec. 5 of HR 4755 prohibit the taking of endangered species upon the high seas. This prohibition should be limited to persons subject to the jurisdiction of the United States and in H.R. 4758 it is so limited.

The last sentence of section 5(f) in both HR 37 and HR 2735 states: "The Secretary is also authorized to conduct or cause to be conducted such law enforcement investigations and research abroad as he deems necessary to carry out the obligations imposed upon him by this Act." Investigations and research abroad may only be undertaken with the cooperation and specific consent of the interested sovereign nation. Furthermore, activities of U.S. representatives abroad must be coordinated in the light of United States foreign objectives. The Administration's bill would solve this problem by including in Section 7, which covers the same subject, the phrase "in consultation with the Department of State."

There is an additional problem in connection with HR 37 Section 9(g) would require any person who engages to any extent in business as an importer of fish and wildlife to register with the Secretary of the Treasury and to keep detailed records of each import of fish and wildlife and of the subsequent disposition made of such imports. The records presumably would have to cover all imports of commercial fish and fish products, many leather articles, such as shoes and bags, and clothing made of or trimmed with fur or leather. In the view of the Department of State, the detailed records required would place a costly burden on normal commercial trade. Since this requirement is only applicable to importers and not to domestic wholesalers, trappers, or manufacturers dealing in wildlife specimens, it could be considered inconsistent with Article III of the General Agreement on Tariffs and Trade. This article requires that imported products shall be accorded treatment no less favorable than that accorded to "like products of national origin in respect of all laws, regulations and requirements affecting their internal sale, offering for sale, purchase, transportation, distribution or use."

The difficulties outlined above are eased in the Administration bill, HR 4758. Section 6(e) of this bill covers the essentials of the above paragraph by allowing the Secretary to require persons importing or exporting fish and wildlife to file declarations with information which he deems necessary. However, the discretionary powers would limit the burdens which would be placed on normal commercial trade.

The Office of Management and Budget advises that there is no objection to the submission of this report and that enactment of HR 4758 would be in accord with the program of the President.

Sincerely,

MARSHALL WRIGHT,
Acting Assistant Secretary for Congressional Relations.

DEPARTMENT OF STATE,
Washington, D.C., March 23, 1973.

HON. LEONOR K. SULLIVAN,
Chairman, Committee on Merchant Marine and Fisheries, House of Representatives, Washington, D.C.

DEAR MADAM CHAIRMAN: Thank you for your letter of February 7, 1973, affording this Department the opportunity to comment on HR 2169, a bill to implement the Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere, and for other purposes.

Section 6 of the bill would require the Secretary of State to transmit to the Pan American Union the U.S. list of species of fish and wildlife to be included as part of the Annex to the Convention. The Department of State would be willing to undertake this obligation. However, we recommend enactment of HR 4758, the Administration's proposed "Endangered Species Conservation Act of 1973" in lieu of HR 2169. The Administration's proposal would provide the optimum approach to strengthening and making more effective our programs for the protection of endangered species.

Regarding comments on the specifically domestic or technical aspects of HR 2169, we would refer to the Departments of Interior and Commerce.

The Office of Management and Budget advises that there is no objection to the submission of this report and that enactment of HR 4758 would be in accord with the program of the President.

Sincerely,

MARSHALL WRIGHT,
Acting, Assistant Secretary for Congressional Relations.

THE GENERAL COUNSEL OF THE TREASURY,
Washington, D.C., March 23, 1973.

HON. LEONOR K. SULLIVAN,
Chairman, Committee on Merchant Marine and Fisheries, House of Representatives, Washington, D.C.

DEAR MADAM CHAIRMAN: Reference is made to your requests for the views of this Department on H.R. 37, H.R. 2735, H.R. 4755 and H.R. 4758, similar bills, "To provide for the conservation, protection, and propagation of species or subspecies of fish and wildlife that are presently threatened with extinction or likely within the foreseeable future to become threatened with extinction; and for other purposes."

The President, in his State of the Union Message of February 15, 1973, on Natural Resources and the Environment, stated that the limited scope of existing laws requires new authority to identify and protect endangered species before they are so depleted that it is too late and that he would ask the 93rd Congress to direct its attention to his problem. The Administration's proposal is contained in H.R. 4758.

In view of the foregoing, the Department recommends the enactment of H.R. 4758 in lieu of further consideration of H.R. 37, H.R. 2735 and H.R. 4755.

The Department has been advised by the Office of Management and Budget that there is no objection to the submission of this report to your Committee and that enactment of H.R. 4758 would be in accord with the program of the President.

Sincerely yours,

DONALD L. E. RITGER,
Acting, General Counsel.

THE GENERAL COUNSEL OF THE TREASURY,
Washington, D.C., March 26, 1973.

HON. LEONOR K. SULLIVAN,
Chairman, Committee on Merchant Marine and Fisheries, House of Representatives, Washington, D.C.

DEAR MADAM CHAIRMAN: Reference is made to your request for the views of this Department on H.R. 2169, "To implement the Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere, and for other purposes."

The proposed legislation, to be administered by the Department of the Interior, would provide for the protection and preservation of wild animals and fish species in their natural habitat pursuant to treaty obligations under the Convention. It would, among other things, prohibit the transportation of any fish or wildlife, the species of which is listed in the annex to the Convention.

The Department defers to the views of the Departments of the Interior and Commerce on the bill. Enactment of H.R. 2169, which includes no specific regulatory or enforcement responsibilities for this Department, would appear to involve no foreseeable administrative or enforcement difficulties.

The Bureau of Customs, the Department foresees, may be called upon to assist in enforcement at ports of entry with respect to import violations. Import shipments requiring detention, lawful disposition, or other measures at the port would add to the Customs workload.

The Department has been advised by the Office of Management and Budget that there is no objection from the standpoint of the Administration's program to the submission of this report to your Committee.

Sincerely yours,

SAMUEL R. PIERCE, Jr.,
General Counsel.

Mr. DINGELL. The Chair welcomes as our first witness, the distinguished and able Assistant Secretary of the Interior for Fish and Wildlife and Parks, Mr. Nathaniel P. Reed.

STATEMENT OF HON. NATHANIEL P. REED, ASSISTANT SECRETARY FOR FISH AND WILDLIFE AND PARKS, DEPARTMENT OF THE INTERIOR, ACCOMPANIED BY DOUGLAS WHEELER, DEPUTY ASSISTANT SECRETARY FOR FISH AND WILDLIFE AND PARKS; EARL BAYSINGER, ASSISTANT CHIEF, OFFICE OF ENDANGERED SPECIES AND INTERNATIONAL ACTIVITY, BUREAU OF SPORT FISHERIES AND WILDLIFE; CLARK BAVIN, CHIEF, DIVISION OF LAW ENFORCEMENT, BUREAU OF SPORT FISHERIES AND WILDLIFE; AND WILLIAM GARNER, OFFICE OF THE SOLICITOR

Mr. REED. Thank you, Mr. Chairman. Although my statement is long, I think it sets forth our views very clearly on this important legislation, and I would, with your permission, like to read it in full.

Mr. DINGELL. You may do so.

Mr. REED. Mr. Chairman, I appreciate this opportunity to appear before you on this important issue.

With me today are Douglas Wheeler, Deputy Assistant Secretary for Fish and Wildlife and Parks; and from the Bureau of Sport Fisheries and Wildlife, Earl Baysinger, Assistant Chief, Office of Endangered Species and International Activities, and Clark Bavin, Chief, Division of Law Enforcement; and William Garner from the Department's Office of the Solicitor.

Legislation to amend the Endangered Species Conservation Act of 1969 was first proposed by President Nixon in his environmental message of February 8, 1972. Much to the President's and my disappointment—and, I am sure, the disappointment of many, many other concerned citizens—a bill was not enacted by the 92d Congress. President Nixon reaffirmed this need for new legislation on February 15 in his environment and natural resources state of the Union message.

Our bill follows closely the precedent established by the Congress in 1966 and 1969, when it enacted the first legislation to protect fish and wildlife endangered in the United States and abroad. The earlier legislation, for which you, Mr. Chairman, and your subcommittee were largely responsible, was the most comprehensive of its type to be enacted by any nation. It has helped reinforce the U.S. position as a world leader in the field of wildlife conservation.

Mr. Chairman, we must maintain this leadership position. Experience has pointed out deficiencies in the existing legislative authorities. Our knowledge of the biology of endangered species and the factors contributing to the threats they face have increased tremendously in the past few years. Furthermore, man and his technology has continued at an ever-increasing rate to disrupt the natural ecosystem. This has resulted in a dramatic rise in the number and severity of the threats faced by the world's wildlife. The truth in this is apparent when one realizes that half of the recorded extinctions of mammals over the past 2,000 years have occurred in the most recent 50-year period.

Man is but a single element of our natural environment and, despite our advanced technology, we can never replace an animal allowed to become extinct. The evolution of new species and the decline of extant ones is a natural sequence of events. Historically, this process occurred as a result of varying natural forces such as climatic changes and natural selection. However, as man emerged on the world scene as a dominant life form, the situation changed dramatically. Man, with his powerful and efficient technology, quickly attained the ability to disturb the ponderous forces and rhythms of nature as he exploited the world's resources and altered the natural environment to accommodate his own needs. Concomitant with man's emergence as a dominant species was a drastically accelerated rate of loss of other species. This reduction in the number of species, either by direct or indirect action of man, has resulted in ecological instability, reduced man's freedom in choosing species for his utilization, and contributed to an impoverished quality of life.

I believe that mankind has matured to the point that we are no longer willing to participate in the unnatural destruction of the end product of eons of evolution. I am not, however, so naive as to believe that man can stop evolution. I know, despite our best efforts, that some species will be lost. Even though we may not be able to save all endangered species, we must make an effort. Enactment of our Endangered Species Conservation Act of 1973 will provide the authorities essential for that effort.

Mr. Chairman, this Nation's lead in endangered species conservation has stimulated interest in other countries. The most recent manifestation of this concern was the convening of representatives from 80 nations in Washington, D.C., on February 12 to conclude a "Conven-

tion on International Trade in Endangered Species of Wild Fauna and Flora."

Mr. Chairman, the record should show that you were a member of the U.S. delegation and served us with distinction. Mr. Goodling served, I might add, as a member of the U.S. team, and on behalf of the Department I would personally like to thank both of you distinguished gentlemen for your assistance in this really great undertaking.

Mr. DINGELL. Mr. Secretary, we thank you for your kindness and a job well done.

Our delegation and our people did an outstanding job as you will observe from the insertion I made in the Congressional Record regarding the accomplishments of the panel. We are well satisfied with your labors and that of the delegation.

The Chair notes also Mr. Baysinger is here and he did an outstanding job as you did yourself and also Mr. Chistian Herter.

Mr. REED. Thank you, Mr. Chairman.

The convention was concluded and opened for signature on March 3. As of right now, Mr. Chairman, 25 nations have signed. Some nations, including the United States, must obtain official sanction to the Convention. We look forward to early ratification by the U.S. Senate.

Agreement on the Convention represents a significant turning point in the history of endangered species conservation, and especially in the area of international cooperation aimed at achieving protection for threatened animals. This Convention had a long incubation period going back about a decade to original effort of the International Union for the Conservation of Nature and Natural Resources in 1963. Time and experience has shown that even if one nation acts to control its trade in wildlife as we did with the 1969 Endangered Species Act and the Lacey Act, the demand will merely move from that country to another. As Secretary Morton said in addressing the International Conference, "Experience makes it clear: Unless we all act together to control trade in endangered species, none of us will be able to act as effectively as we must to protect what is precious and is our own." Nations represented at the Conference determined to take the steps necessary to control international trade in certain endangered species.

Mr. Chairman, the "Convention on International Trade in Endangered Species of Wild Fauna and Flora" recognizes the critical role of plants and animals in our total ecosystem. We are presently working with the Departments of Commerce and Agriculture and the Smithsonian Institution in determining what, if any, additional authorities are needed to preserve endangered flora pursuant to the Convention. We are, in fact, looking at all of the provisions of the Convention to determine the best methods of implementation. We believe the administration's bill, H.R. 4758, is compatible with the Convention with respect to endangered fauna. There may be need to provide authority for listing endangered flora, and for habitat acquisition and regulations on the taking and transportation of flora listed as endangered. It would be premature at this time to provide the committee with specific recommendations regarding this matter. It is my sincere hope that the Convention will be sent to the Senate for ratification in the next few weeks. We, the State Department, Department of Commerce, Department of Agriculture, and Smithsonian In-

stitution are all working together on actions necessary to implement the convention.

H.R. 4758, addresses the need to identify those species or subspecies of fish and wildlife which, though not yet threatened with extinction, are likely within the foreseeable future to become so threatened. I am convinced that it is far more sound to take the steps necessary to keep a species or subspecies from becoming endangered than to attempt to save it after it has reached that critical point. Although it is imperative that we take immediate steps to prevent species presently threatened from joining the ranks of their extinct relatives, it is equally, if not more important that we not overlook other species whose populations have been reduced, but are not yet threatened with extinction. They may become threatened with extinction if population levels are not monitored and other appropriate management activities taken as needed. For this reason we have defined "endangered" to mean any species or subspecies of fish and wildlife which is either presently threatened with extinction, or is likely within the foreseeable future to become threatened with extinction over all or a significant portion of its range, and over what portion of its range such condition exists.

With respect to species likely within the foreseeable future to become threatened with extinction, H.R. 4758 would provide discretionary authority to the Secretary to regulate the import, taking, and interstate transportation of those animals. The type and degree of control exercised over this class of animal would depend on the circumstances of each species. It could include a complete or partial ban on taking if deemed appropriate. Authorities provided in our bill will also enable us to provide a "halfway house" for animals whose populations have not declined to a point where the species is no longer a viable component of its ecosystem, but are not yet restored to the point where it is ready to be removed completely from the protective umbrella of the Endangered Species Conservation Act.

Our proposal prohibits the import, export, taking, and interstate transportation by persons subject to the jurisdiction of the United States of any species or subspecies presently threatened with extinction. An exception is made for economic hardship, for scientific, zoological, and educational purposes as well as for certain management activities required for enhancement of the survival of the species.

Under existing Federal statute, only the importation of animals listed as endangered is federally controlled. There is no Federal prohibition on taking animals listed as endangered under the 1969 act. Thus it is legal, in some States, to kill animals that are listed as endangered.

Mr. Chairman, the Endangered Species Act of 1969 provides inadequate Federal legal protection for many endangered species. Endangered migratory birds are given Federal protection under the Migratory Bird Treaty Act, and the endangered southern Bald Eagle is provided additional protection by the Bald Eagle Act. Certain other species are protected on Federal land by Federal regulation. Non-migratory species are dependent upon laws of the respective States for legal protection. There are instances where the States have not provided necessary protection for their resident endangered animals. Under the proposed legislation, Federal protection would be provided to all endangered species. However, the bill provides for the suspen-

sion of Federal jurisdiction over the taking of a species within a State when the Secretary determines that such State maintains an active program for conservation of endangered species. Such a State program must also include enactment of laws that are at least comparable to the Federal statute.

Wildlife programs conducted by State agencies have been traditionally oriented toward resident game species. Since the Federal Government has only very limited authority to act on behalf of resident wildlife, we could easily lose an endangered species. This is particularly true for some of the less conspicuous ones such as reptiles, amphibians, mollusks and crustaceans. It is possible that while we tried to decide who, if anyone, had the authority or resources to act on behalf of these species, their status would deteriorate to a point of no return. The authority provided in H.R. 4758 would eliminate that possibility by permitting the Federal Government to bolster the protection provided by the States until the appropriate State or States were ready, willing, and able to assume the responsibility.

Mr. Chairman, the States have an all-important role to play in the protection of endangered species. State agencies have scientific management and law enforcement resources we can never equal. I believe that provisions of this bill will provide the maximum protection to the Nation's threatened animals and, at the same time, provide an incentive to the States to develop programs responsive to the needs of endangered animals found within the State.

Mr. Chairman, we do not intend to usurp the privilege of the States to manage their resident wildlife. However, as in the international situation, one State, acting alone, cannot effectively protect its native endangered species. The same is true within one Nation. All States must work together as one to save our natural heritage and protect our environment. All States must agree to certain standards, to certain management practices, to certain controls or restraints if we, as a Nation, are to assume the responsibility for safeguarding our environment for future generations.

H.R. 4758 clarifies Federal authorities pertaining to warrantless searches and forfeiture of seized property. Congress recognized the need to provide such authority in the Marine Mammal Protection Act. The language in our proposed act closely parallels the search and seizure provisions of the Marine Mammal Act.

Our proposal provides authority for this program to be administered jointly by this Department and the Department of Commerce pursuant to the allocation of responsibilities established by Reorganization Plan No. 4 of 1970. Furthermore, it directs all other Federal agencies to utilize their authorities for carrying out programs for the protection of endangered animals.

To assure protection of endangered species commensurate with the threat to their continued existence, we propose, in H.R. 4758, to remove the current ceiling imposed by law on acquisition of essential wildlife habitat with land and water conservation fund moneys. There are many instances where endangered species are found outside of public lands, and direct habitat acquisition or easement purchase is the only means of giving these species the protection needed to prevent their further decline.

As we have gained experience in the management of endangered species, it has become more apparent that the availability of habitat is a key factor in protection and restoration. For this reason, it is vital that the restrictions on habitat acquisition be eliminated. We have reached the limits imposed under the current act. Land and water conservation fund money can no longer be utilized for this important aspect of wildlife management.

Mr. Chairman, while we support the general purposes of H.R. 37 and the other identical and similar bills, we recommend enactment of H.R. 4758. We believe that the separate definition of "fish" and "wild-life" contained in H.R. 37 and identical bills could result in ambiguities as to which animals are included under each term. In the definitions section of H.R. 37, the term "Federal lands" is defined. Considering that the prohibitions apply to taking "within the United States," we do not see the need for a separate definition of "Federal lands."

We anticipate a potential legal problem relating to the phrase "not less than annually" in section 4(b) of these bills. This language could be interpreted as requiring the Secretary to establish a new list of endangered animals or reestablish the existing list—assuming that no changes were appropriate at that time—at least once every year. It is not inconceivable then, that if, through some circumstance, the Secretary failed to republish a list for which no changes were appropriate, a defendant in a civil or criminal proceeding under this act could claim that the list had legally lapsed. This problem would be avoided under H.R. 4758 which stipulates that the Secretary publish a list and allows him to revise such list "from time to time."

H.R. 37 and some of the other bills direct the Secretary through the Secretary of State to convene an international meeting on endangered species. Since such a meeting was just held in Washington, D.C., resulting in the conclusion of the "Convention on International Trade in Endangered Species of Wild Fauna and Flora," we question the need for another meeting within the coming year.

My comments on H.R. 37 are applicable to all but three of the bills being considered by this committee. Two of these remaining three bills are identical to H.R. 13081, introduced in the 92d Congress. While they are, therefore, quite similar to this year's administration bill, we believe that the refinements we have made in H.R. 4758 make it better than last year's bill. H.R. 2169, the "Nature Protection Act" would implement the "Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere" and amend the original 1966 Endangered Species Act. This bill offers only a partial solution to the problem of protecting endangered animals.

Mr. Chairman, I urge your committee to favorably report our Endangered Species Conservation Act of 1973. H.R. 4758 will provide a comprehensive approach to the effective management and conservation of threatened wildlife.

Thank you.

Mr. DINGELL. Mr. Secretary, you have given the committee a useful, helpful and high quality statement. We thank you.

Mr. Goodling?

Mr. GOODLING. Mr. Reed, on page 3 you say despite our best efforts some species will be lost. What species do you have in mind?

Mr. REED. Mr. Goodling. In the international field, I mean some of the world's big animals are going to be lost if we do not, for instance, effectively control the poaching of spotted cats. Some of these animals, Mr. Goodling, are in serious trouble, and we may lose them.

Mr. GOODLING. Are you thinking of the United States?

Mr. REED. Within the United States, I am deeply concerned about the manatee as a big animal, and I have watched in my lifetime a vast vast array of mollusks in southern streams totally disappear as a result of damming, channelization, and pollution.

It often is asked of me, "what is the importance of the mollusks for example in Alabama." I do not know, and I do not know whether any of us will ever have the insight to know exactly why these mollusks evolved over millions of years or what their importance is in the total ecosystem. However, I have great trouble being party to their destruction without ever having gained such knowledge. Also, I am deeply concerned over the number of birds that are having great difficulty reproducing for various reasons. For instance, the Mississippi Sandhill Crane certainly has its share of problems coming unless we provide more habitat for its protection. We could lose the Whooping Crane in 1 night, in one storm. That is a fact we all live with. As much as in being done by Canada and the United States to protect them in the northern Canadian wildlife region of Great Slave Lake where they nest, all the way to Aransas National Wildlife Refuge in southern Texas where they migrate each fall. In just 1 night we could lose them.

Mr. GOODLING. What is the population at the present time?

Mr. REED. If memory serves me, it is 50 in the wild and 21 in captivity. Both the Canadians and the Bureau of Sport Fisheries and Wildlife are predicting a good nesting season. Many are going into full mating dance and dance effectively, showing a lot of interest. If they continue that interest all the way up to Wood Buffalo National Refuge in Canada, we should have a good hatch. It is a great struggle, as you know, to hang onto the Whooper.

Mr. GOODLING. I was interested in one other statement you made. You say that in some states it is still legal to kill animals that are on the endangered species list.

What animals do you have in mind?

Mr. REED. Two that immediately come to mind, Mr. Goodling, are the alligator and the wolf.

The first bill and the 1969 act that this committee passed was a significant milestone in international conservation, and in American conservation. However, we find ourselves in a bind. We must put an animal on the endangered species list to give it protection over all of its range when it could be surplus in part of its range. The alligator, which for instance, in Florida and Louisiana are numerous and coming back may be able to stand a harvest. But, the alligator is in real trouble throughout the rest of its range.

The administration's bill gives the Secretary the power to allow harvest in areas where the animal is not presently threatened with extinction and protect him in areas where he is in trouble, that is, where he is likely to become threatened with extinction.

The same thing applies to timber wolves and other animals of that status.

Mr. DINGELL. Would the gentleman yield?

Mr. GOODLING. Yes.

Mr. DINGELL. You mentioned the alligator and I know that is a matter of considerable interest to Mr. Breaux and also the present occupant of the Chair.

Is it possible for us, through enactment of H.R. 37 or H.R. 4758 to essentially amend the convention to allow not only harvest, but to allow marketing of these animals in other countries?

Under the convention would that require also a concurrent act by yourself moving that particular species from appendix I category to appendix II category? Under appendix I there cannot be any marketing or commercial use of the animal in the country of import. It is possible for that to be done under appendix II.

Mr. REED. That is correct. Although appendix I and appendix II of the Convention and the two levels of endangerment provided in H.R. 37 or 4758 are similar, they are not necessarily identical, nor is one necessarily directly related to the other. Both appendix I as provided for by the convention and the designation as presently threatened with extinction provided for by these bills would contain seriously threatened species. The most significant difference centers around how a species is placed on the appendices as opposed to the way one is placed on the endangered species list. Adding or removing a species from the appendices of the convention requires the concurrence of a percentage of the nations who are signatory to the convention, whereas an amendment to the list may be accomplished unilaterally. As we know, factors other than good biology sometimes become involved in decisions which require international agreement.

The convention permits any nation to enact domestic laws which are more restrictive than the convention but they are not permitted to allow that which the convention prohibits.

Therefore we could not, unilaterally, add or remove any species from the appendices to the convention nor could we, as a signatory nation, engage in commercial trade of any species on appendix I. However, if there were a species which was not on appendix I—for whatever reason—and we had cause to believe it was threatened by trade, we could place it on our endangered species list as provided by these bills.

In practice, we would strive to have our lists as compatible with the appendices as possible.

Mr. DINGELL. Obviously, we cannot have a commercial harvest of alligators for sale in other countries unless the animal is under appendix II. Appendix I species are not able to be marketed.

Would you give us your comments and assistance on that point?

Mr. REED. That is correct. As you know the alligator is one of the "charter members" of our endangered species list as provided under the existing law. It also provides an excellent example of one of the shortcomings we have found in the existing law.

Although we do not yet agree that an adequate management program exists for the alligator throughout its range, we are very pleased with the comeback of this reptile in parts of its range—especially parts of Florida and a few parishes in Louisiana. We do not consider the alligator to be one of the more critically endangered species. In fact,

if a more comprehensive management program existed we would take a less critical view of a limited harvest of the alligator.

However, the present law gives us no latitude in handling these borderline cases. We now must make a judgment that an animal either is presently threatened with extinction or it is not. Both H.R. 37 and H.R. 4758 would add the new "in-between" category—animals which are likely to become threatened—and would allow geographic considerations. They also would permit such management of animals listed as "likely to become" as is judged to be in the animals' best interests.

Our delegation of the international conference did not challenge the nomination of the alligator to appendix I of the convention because it presently is on our list of endangered native fish and wildlife.

If this bill is enacted we will review the status of each animal on the existing list to determine whether they would be best placed as a species presently threatened with extinction or as a species likely to become threatened with extinction. Any animal now on our endangered species list that we would find cause to move to the likely to become endangered category or removed altogether, probably also would be recommended to the international conference of contracting states for placement on appendix II or removal altogether as provided by the convention. The alligator certainly would be one of those given careful study and, if a more comprehensive management program can be developed, appears a likely candidate for listing as likely to become threatened with extinction, and for nomination to appendix II, we will make a recommendation as to the placement of the alligator on appendix II of the convention. If so determined, then the listing of it as likely within the foreseeable future to be threatened with extinction under the terms of the administration's bill, would allow a limited harvest within the range that he is not in trouble or in danger.

Although I look on the existing acts as milestones in American conservation, this is the flexibility for which you and the members of the committee have seen a need since the legislation in 1969.

Mr. DINGELL. We worked together on that, as you will recall.

I thank you, Mr. Goodling.

Mr. GOODLING. That is all.

Mr. DINGELL. Mr. Breaux?

Mr. BREAU. Thank you, Mr. Chairman.

Thank you, Mr. Secretary and Mr. Wheeler, for appearing. Your cooperation and assistance to the committee and myself are deeply appreciated.

Mr. Secretary, I'd like to direct your attention if I may, to the Trade Convention Treaty about which we are talking. As Mr. Dingell pointed out, the alligator is on the endangered species list in appendix I.

Are there any means for placing the alligator under any additional appendix?

Mr. REED. As you know, the placement of species on the appendices was an action in which each of the 80 nations participating in the international conference had a say; it was not the sole prerogative of the U.S. delegation. As things stand today, the alligator appears

accurately placed on appendix I. However, as I indicated earlier, if we get the flexibility provided by H.R. 4758 or a bill similar to it, the Bureau will accelerate its studies so that we can go to the convention countries legitimately and with good reason and provide the information needed to accurately place species on either appendix I or II.

I live in a State where we have a great number of alligators. I am not prepared to tell you that I think Florida should immediately embark upon a program for their harvest, but I do see a serious problem coming as poaching is cut down and seriously controlled. The animal has shown remarkable ability to reproduce, and to come back into its range where it formerly had been decimated.

The chairman knows the area well. Ten years ago the alligator in conservation districts I, II, and III of the Everglades were literally wiped out by a very small group of men who were making an extraordinary living selling the hides out of our State, across our border. The damage done to the entire wildlife population in the Everglades by the loss of the alligator is incalculable in my opinion.

As you know, Mr. Breaux, the alligator in the Florida Everglades is absolutely essential if life is to continue. Their activities in digging spring "gator holes" provides deep water holes. When drought comes those spring holes are the only place in the Florida Everglades that have water. These holes are the birthplace for the entire ecosystem when the rains come back in June and July. They essentially are a spawning ground for the Everglades wildlife.

I assure you we will take a responsible position on that animal. Also we have to examine with great care our position on the timber wolf. We must examine what the management plan should be to try to bring him back throughout what range there is available.

The problem in Minnesota as you and members of the committee know is that the wolf is in good numbers in one limited area. As that population grows it expels members. Those individuals drift south and get into trouble with dairy farms. Minnesota feels very strongly that the wolf should be cropped. I feel we should try to identify other places to which they can be moved, and if there are no such places then I would have to agree with Minnesota that a certain percentage of the surplus animals that cannot find and establish a range well may have to be cropped.

MR. BREAUX. As I understand the bill, the department is allowed to designate areas in which the species is endangered and areas where it is not endangered.

How could this affect county lines—where some counties within a State have an endangered species while others do not?

MR. REED. Both the State and Federal officers would have an awfully hard time dealing with areas as small as some counties. It is possible, but I can hear Mr. Bavin who is Chief of the Bureau's Law Enforcement Division, sitting behind me, shaking right now.

MR. BREAUX. This also brings up the problem of money—a very large problem. If the Federal Government is going to move into this area which I think has traditionally been under the jurisdiction of the

State fish and game people, how much more money will this cost the Department of Interior to operate such a program?

Mr. REED. We certainly have no intent of usurping the States' traditional prerogative to manage their resident wildlife. However, we are concerned that some States either do not have the authority, the resources, or for other reasons do not have adequate programs to guard against the loss of some varieties of wildlife found in their borders. Additional problems exist when an animal occurs in more than one State. I covered these points in my statement pretty thoroughly.

As you know, H.R. 4758 provides for the Secretary to suspend Federal authority when a State demonstrates that it has a sound program for the conservation of endangered species and has enacted laws at least as stringent as the prohibition contained in the Federal statute.

I am very optimistic that the 50 States are going to very swiftly, and I mean within a year, pass laws giving them the authority they need. I think it is obvious that all 50 States now have skilled game and fish agency heads and departments. This certainly was not true, as the chairman well remembers, in the 1940's or 1920's but it is true today. In the last decade or so, we have seen those State game and fish agencies headed more and more by professionals. We have seen a lessening of political influence within those directors' offices. It has been a commendable transformation, and one that complements the job of wildlife management.

I envision the Federal role as an overseeing operation. As you know, I have made tremendous efforts to establish good working relations with the International Association of Game, Fish and Conservation and with the various State directors during the past few years. They have my word that this is not a one-way bill; that I am not going to try to take something away from them.

I am going to try, very frankly, to encourage them to broaden their activities, beyond the traditional concern only for animals which are harvested by sportsmen. I want them to be deeply involved in all forms of wildlife within the borders of their States, and that includes pelicans, songbirds, reptiles, and invertebrates.

I hope that within the year, Mr. Breaux, each of the States will pass a program which will be acceptable to us, and our job will be looking over their shoulder. It will be a very friendly look over the shoulder because the day that the Department of the Interior ever thought it could do it alone has long fallen by the wayside.

We expect to do this under existing program authorities and fiscal authorities.

Mr. BREAU. Thank you for your comments. I would like to say that the district I represent in Louisiana has instituted a sound management practice program.

Mr. REED. One of the great things I was involved with in Florida was the first work on the Brown pelican with your State fish and game people. At that time, everybody laughed at us, saying you are using the hunter's money to study a nongame bird. However, we stood up and said it was the State bird of Louisiana, and it was a bird our tourists

enjoyed seeing in Florida. We produced the basic research on that bird that eventually lead to its reestablishment in Louisiana.

Mr. BREAU. Mr. Secretary, the International Treaty, as I understand it and as the chairman pointed out, has three appendix—three separate lists of varying degrees regarding endangered species.

However, I understand the bill provides only two separate lists—one concerning the species presently endangered and another concerning species which might be endangered within the foreseeable future.

Do you believe this is sufficient, or do we need a bill which includes a third list similar to what the treaty provides?

Mr. REED. No, sir, our staffing on this indicates we can take care of the third category under existing authorities.

Mr. Wheeler?

Mr. WHEELER. The concept of the third appendix to the treaty results from our practice under the Lacey Act. It is an international application of the Lacey Act. This concept it now being expanded with respect to international activity.

In effect, this is the International Lacey Act.

Mr. BREAU. As I understand the information provided on page 10 of your statement, the bill does provide for a regular review of any animal placed on the endangered species list; is that correct?

Mr. REED. Yes, sir.

Mr. BREAU. Would such a review be requested by the State?

Mr. REED. It could be. It would be my hope that after the first 2 or 3 years that our list would be agreed upon by the States, and that hopefully, with intense management a number of animals can come off that list within the next 10 years. I think there is that possibility.

Mr. BREAU. I think I'm reflecting the feelings of State game agents when I ask whether or not the States would be consulted on the wording procedures of placing an animal on the endangered species list. Many States are concerned over this matter of consultation before an animal is placed on such a list.

Mr. REED. I recognize the problem, Mr. Breau. I recognize that I cannot leave indelibly, in concrete, what my successor should do or his successor should do. But I think this thing will not work unless there is a strong hand involved here to settle a parochial problem within the borders of a State.

I will be very honest with you. The day of jamming something down the State game agency's throats, in my opinion, is long gone. Consultation to me means just that. I would have great difficulty not accepting a management plan if the State had done its homework.

I think we would be here in front of this committee or another committee on oversight hearings very promptly if for fickle reasons of the Washington bureaucracy we decided to leave an animal on or off the list with no good scientific or technical expertise behind the decision.

I recognize the difference between the words, and I recognize when I sat for 4½ years in the Governor's office in Florida the great prob-

lems of States rights. I also recognize the problem of endangered species in the United States and the need to have overview.

Mr. BREAUX. I think the main thing we must have, Mr. Secretary—and I'm sure you agree—is that no penalties be imposed on States that do have sound and strong management procedures as a result of penalties imposed on States that do not have such procedures.

Mr. REED. I agree.

Mr. BREAUX. A last question, Mr. Chairman.

Mr. DINGELL. We are short of time. We do have two or more witnesses to go, Mr. Breaux.

Mr. BREAUX. I will yield to my chairman and talk later to the Secretary.

Mr. DINGELL. Mr. Forsythe?

Mr. FORSYTHE. Thank you, Mr. Chairman.

Welcome back again, Mr. Secretary. I have just a couple of questions, one on this implementation of the convention and it certainly sounds like a great piece of work.

I gather that you feel we should not delay passage of the bill to include the implementation of the convention?

Mr. REED. That is correct. We feel that this legislation should not be delayed. This committee handled this legislation a year ago, and unfortunately it did not get through Congress. We feel we should put our maximum effort in this year. Our amendments for implementing the convention should be short and easy to add, and may not necessitate any delay in getting the bill through.

Mr. FORSYTHE. Thank you. On H.R. 4758, section 2(b), Federal agencies are required to protect endangered species consistent with the primary purposes of such bureaus, agencies, et cetera.

This language does not appear in H.R. 37. Is it the same language we have in the same bill in the 92d Congress? Why should not Federal agencies adhere to this, regardless or on the same level with that primary purpose?

Mr. WHEELER. Mr. Forsythe, if I could answer that question, my recollection is that the law provides that some other Federal agencies shall utilize their authorities for the benefit of endangered species consistent with the primary objectives of those agencies.

We feel that language mandatory, and I believe this was the case in the 92d Congress, would further signal to all other agencies of Government that this is the first priority, consistent with their primary objectives. We have lots of land management agencies who could provide for the protection of endangered species habitat at the same time they carry out their primary mission.

Mr. FORSYTHE. You do think it is strong enough?

Mr. WHEELER. Yes, without causing them to override their own principal objectives.

Mr. FORSYTHE. Thank you. Does H.R. 4758 provide for criminal penalties?

Mr. REED. Yes, sir.

Mr. FORSYTHE. Under section 6(e) of the bill, commercial importers of shell fish and fishery products and two other instances are specifically exempted from providing information that might be requested by the Secretary. Why?

Mr. BAYSINGER. The provision you refer to speaks primarily to the importation of shell fish and fishery products for commercial or recreational purposes. The bill exempts commercial and recreational fishermen from having to bring this material into a designated port of entry or from filing declarations. It would be a great hardship on the recreation sport fisherman to require that he come in at only designated ports and file declarations.

The provisions of section 6(e) and 4(c) in no way exempts the commercial and recreational fisherman from the prohibitions of section 4 (a) and (b).

Mr. REED. I might add, it is a NOAA provision to the extent that it involves marine fishing, and I am sure Mr. Pollock can answer that.

Mr. FORSYTHE. I think that covers the concerns I have, Mr. Secretary.

Thank you, Mr. Chairman.

Mr. DINGELL. Mr. Metcalfe?

Mr. METCALFE. No questions, Mr. Chairman.

Mr. DINGELL. Mr. Studds?

Mr. STUDDS. Thank you, Mr. Chairman.

Mr. REED, I have my one usual parochial and plaintive question about the Ipswich Sparrow.

In the spring of 1970 your department entered into a management agreement with the Department of Navy with regard to the Island of Nomans Land Island off the coast of Martha's Vineyard.

Mr. REED. I know the island.

Mr. STUDDS. I am so glad we have found somebody who does. That agreement as you know is now 3 years old and called for an annual work plan to be submitted by the two departments jointly for the protection of the wildlife of the island, most particularly the Ipswich Sparrow which I believe is an endangered species.

So far as I know in 3 years the only thing that has been done that would effect the wildlife of the area is to bombard it from the air and I wonder if you can give us any light on what has become or if there has been or if there is going to be the annual working plan called for by that joint agreement.

Mr. REED. I will have to turn that question over to Mr. Baysinger, but in the future I will make myself very knowledgeable on the Ipswich Sparrow and its problems on Nomans Land, but for the immediate answer I will have to turn to Mr. Baysinger.

Mr. BAYSINGER. I am not going to do much better. I am familiar with the island and the sparrow, but not the status of the working plans. We can get this information for you.

Mr. STUDDS. I would appreciate that. We have asked the Department of the Interior and the Department of the Navy and all we can

get is a description of the actual ordinance that is being deposited on the sparrow and I am wondering if anything other than that is being done to preserve the poor creature.

Mr. BAYSINGER. This would be handle out of the Bureau's Boston office, and we can get it for you.

Mr. REED. The question Mr. Forsythe asked is applicable to your question about the Navy on Nomans Land Island. Our bill if enacted would have the Navy, though its primary purpose in using Nomans Land is as an ordinance target, take on a very large responsibility as a land managing agency to protect any endangered species on that piece of land and on any other land they manage.

Mr. STUDDS. I am glad to hear that. Some very colorful things are being dropped on the sparrow at the moment.

Mr. BAYSINGER. For the purpose of the record I should note that although the Ipswich sparrow is a species about which we are concerned, it is not presently on the list of endangered species.

[The following information was supplied for the record:]

NOMANS LAND ISLAND, MASS.

The Department of the Interior entered into a Joint Management Agreement in April 1970 with the Department of the Navy which permits wildlife management by this Bureau to the extent consistent with military operations. Nomans Land Island is not a part of the National Wildlife Refuge System. Primary jurisdiction over the island is still vested in the Navy. This agreement was entered into with full knowledge that the Navy would continue to use the island as a target.

Our observations have not disclosed any wildlife losses resulting from Navy operations. Most of the wildlife inhabitants, primarily migratory birds, use the island fringe or shoreline and sand-spit areas. Navy practice has occurred more toward the center of the island. Since explosive bombheads are not used—only small practice bombs—wildlife fatalities would result only from a direct hit. Our observations have not disclosed any bomb craters that appear to have been made during the past three-year period.

Nomans Land Island was visited by a Bureau of Sport Fisheries and Wildlife biologist on October 23, 1969, August 9, 1970, and February 8, 1972. A trip is scheduled with the Navy to the island in May 1973, at which time final data will be gathered for preparation of a Management Plan. Annual Programs and determination of funding needs will be developed from the Management Plan after its approval by both parties to the agreement.

Mr. DINGELL. Mr. de la Garza?

Mr. DE LA GARZA. No questions.

Mr. DINGELL. Mr. Potter?

Mr. POTTER. Mr. Reed, do you read H.R. 4758 as making it a Federal crime to take endangered species on Federal lands?

Mr. REED. Yes.

Mr. POTTER. That relieves one of my apprehensions.

Could you supply for the record a list of hardship exemptions that have been granted by the Department since the 1969 act?

Mr. REED. Yes.

[The information follows:]

ECONOMIC HARDSHIP, PUBLIC LAW 91-135, SEC. 3(b) 50 CFR 17.12(a)

Endangered species importation permits	Effective date	Permittee	Product
ES-1-----	July 1, 1970	Lubrizol Corp., Cleveland, Ohio-----	Sperm whale oil, 1,000 long tons/cold filtered.
ES-2-----	July 2, 1970	Werner G. Smith, Inc., Cleveland, Ohio-----	Sperm whale oil, 1,500 metric tons/crude.
ES-7-----	July 27, 1970	Archer Daniels Midland Co., Decatur, Ill-----	Sperm whale oil, 2,500 metric tons.
ES-21-----	Dec. 2, 1970	Werner G. Smith, Inc., Cleveland, Ohio-----	Sperm whale oil, filtered.
ES-22-----	do-----	Archer Daniels Midland Co., Decatur, Ill-----	Sperm whale oil, crude.
ES-23-----	Dec. 4, 1970	Amtraco Commodity Corp., New York N.Y-----	Baleen whale liver, frozen.
ES-24-----	Jan. 1, 1971	Kal Kan Foods, Inc., Vernon, Calif-----	Baleen whale meat, sperm whale meat.
ES-25-----	Dec. 9, 1970	Wilbur-Ellis Co., New York, N.Y-----	Whale meal.
ES-26-----	Dec. 18, 1970	Sign of the White Whale, Inc., Port Washing- ton, Long Island, N.Y.	Sperm whale teeth.
ES-28-----	Dec. 11, 1970	M. Michel & Co. Inc., New York, N.Y-----	Oleyl alcohol, derived from sperm whale oil.
ES-29-----	Dec. 14, 1970	Arista Industries, Inc., New York, N.Y-----	Sperm whale oil.
ES-30-----	Dec. 21, 1970	Robeco Chemicals, Inc., New York, N.Y-----	Spermaceti wax, a product of the sperm whale.
ES-31-----	Dec. 31, 1970	Lubrizol Corp., Wickliffe/Cleveland, Ohio-----	Sperm whale oil.
ES-32-----	Dec. 23, 1970	Werner G. Smith, Inc., Cleveland, Ohio-----	Sperm whale oil, filtered.
ES-33-----	Dec. 29, 1970	Neatsfoot Oil Refiners Corp., Philadelphia, Pa-----	Sperm whale oil, crude No. 1.
ES-34-----	Dec. 28, 1970	Polyesther Corp., Southampton, N.Y-----	Oleyl alcohol, derived from sperm whale oil.
ES-35-----	Dec. 29, 1970	Scandinavian Oil Co., New York, N.Y-----	Sperm whale oil.
ES-39-----	Jan. 12, 1971	Charabot & Co., Inc., 114 East 25th St., New York, N.Y.	Ambergris from sperm whales.
ES-40-----	Feb. 1, 1971	Fallek Products Co., Inc., New York, N.Y-----	Oleyl alcohol from sperm whale oil.
ES-41-----	Jan. 8, 1971	Archer Daniels Midland Co., Decatur, Ill-----	Sperm whale oil.
ES-43-----	Jan. 11, 1971	Rare Feline Breeding Compound, Center Hill, Fla.	Lowland gorilla reshipped to the Detroit Zoological Garden.
ES-45-----	Jan. 7, 1971	International Animal Exchange, Inc., Fern- dale, Mich.	Douc langurs—3 (2 to St. Louis Zoo; 1 to San Antonio Zoo).
ES-46-----	Jan. 5, 1971	Charles P. Chase Co. Inc., Miami, Fla-----	1 tapir.
ES-47-----	do-----	Charles P. Chase Co., Inc., Miami, Fla-----	Brazilian tapirs (2 live male).
ES-50-----	Jan. 29, 1971	Werner G. Smith, Inc., Cleveland, Ohio-----	Oil of the sperm whale, 3,070 long tons.
ES-51-----	Feb. 3, 1971	Archer Daniels Midland Co., Decatur, Ill-----	Oil of the sperm whale, 16,430 long tons.
ES-53-----	Feb. 8, 1971	Robeco Chemicals, Inc., New York, N.Y-----	Products of the sperm whale, spermacet wax and sperm oil hydrogenated.
ES-55-----	Mar. 1, 1971	Melvin Dadd, Bay Village, Ohio-----	Sperm whale teeth.
ES-57-----	Feb. 22, 1971	Louis Denker, 214 West 29th St., New York, N.Y., (commercial permit).	Raw skins: 50 Giant otters from Peru.
ES-58-----	Dec. 10, 1970	Croda, Inc., New York, N.Y-----	Alcohol, from sperm whale oil.
ES-64-----	Mar. 16, 1971	Edward D. Sultan, Ltd., Honolulu, Hawaii-----	Whales teeth—scrimshaw.
ES-65-----	Mar. 18, 1971	Herz Specialty Products, Inc., Long Island City, N.Y.	Manufactured flat goods from the skin of crocodiles.
ES-66-----	Mar. 19, 1971	Associated Dry Goods Corp., New York, N.Y-----	Do.
ES-67-----	Mar. 19, 1971	do-----	Do.
ES-69-----	Apr. 1, 1971	Four Winds, Nantucket, Mass-----	Sperm whale teeth.
ES-70-----	Apr. 5, 1971	Sign of the White Whale, Inc., Port Washing- ton, Long Island, N.Y.	Sperm whale carvings.
ES-81-----	Feb. 10, 1971	International Flavors & Fragrances, 521 West 57th St., New York, N.Y.	Ambergris, from the sperm whale.
ES-84-----	Apr. 20, 1971	Charabot & Co., Inc., New York, N.Y-----	Ambergris, 20 kilos net.
ES-88-----	Mar. 10, 1971	BASF Wyandotte Corp., Parsippany, N.J-----	Sperm whale oil, raw oil II.
ES-97-----	June 1, 1971	International Animal Exchange, to Gladys Porter Zoo, Brownsville, Tex.	4 gorillas.
ES-101-----	June 14, 1971	Sign of the White Whale, Port Washington, Long Island, N.Y.	Sperm whale products, whale jawbone.
ES-107-----	July 2, 1971	Norda Essential Oil & Chemical Co., 475 Tenth Ave., New York, N.Y.	Whale product: Cetyl alcohol.
ES-110-----	July 8, 1971	Rare Feline Breeding Compound, Center Hill, Fla., delivered to Denver Zoological Garden.	1 female juvenile, lowland gorilla
ES-112-----	July 12, 1971	Roger LaViale, Ltd., 1290 Avenue of the Amer- icas, New York, N.Y.	Vicuna cloth, 8½ yards.
ES-113-----	July 15, 1971	R. W. Williams Co., San Pedro, Calif-----	Sperm whale, jaw bones with teeth.
ES-115-----	July 20, 1971	E. L. Scott & Co., Inc., New York, N.Y-----	45 kilos, ambergris, from sperm whale.
ES-117-----	Aug. 1, 1971	Greater Baton Rouge Zoo, Baton Rouge, La-----	1 female ring-tailed lemur.
ES-118-----	Aug. 4, 1971	Birmingham's Jimmy Morgan Zoo, Birming- ham, Ala.	1 male orangutan.
ES-119-----	Aug. 16, 1971	Norda Essential Oil & Chemical, New York, N.Y.	Whale products: 20,000 pounds, Cetyl alco- hol, super,
ES-121-----	do-----	International Animal Exchange, Ferndale, Mich., (for Gladys Porter Zoo).	2 douc langurs.
ES-122-----	do-----	do-----	2 female pileated Gibbons.
ES-126-----	Sept. 17, 1971	Sign of the White Whale, Inc., Port Washington, Long Island, N.Y.	Sperm whale teeth.
ES-127-----	Oct. 1, 1971	The Four Winds, Nantucket, Mass-----	1,500 pounds sperm whale teeth.
ES-129-----	Oct. 12, 1971	New Bedford Surplus Sales Co., Inc., New Bedford, Mass.	7,000 lbs., whale bone.
ES-130-----	do-----	do-----	1,400 lbs, sperm whale teeth.
ES-131-----	do-----	do-----	Artifacts from sperm whale teeth.
ES-135-----	Nov. 24, 1971	J. Manheimer, Inc., New York, N.Y. (Long Island City, Queens)	110 kilos ambergris from the sperm whale.
ES-154-----	Sept. 1, 1972	William F. Wallace, Jr., Corpus Christi, Tex-----	1 raw leopard sini trophy.
ES-155-----	May 15, 1972	I. D. Shaprio, Baltimore, Md-----	1 leopard skin trophy.

Endangered species importation permits	Effective date	Permittee	Product
ES-159----	May 22, 1972	Alton J. Coppridge, M.D., Durham, N.C.	Trophies: Skins/skulls, 2 jaguar, 1 ocelot, 1 cougar.
ES-160----	May 17, 1972	Frank M. Thompson & Associates, Inc., Bradenton, Fla. (for zoo at Knoxville, Tenn).	1 pair cheetahs.
ES-161----	May 15, 1972	Robert H. Elder Inglewood, Calif.	Trophy parts: Malaysian tiger.
ES-162----	May 22, 1972	Gerald L. Warnock, M.D., Portland, Oreg.	Trophy: Skin/skull of leopard.
ES-163----	May 26, 1972	Roeding Park Zoo, Fresno, Calif.	1 male cheetah.
ES-164----	June 6, 1972	Rare Feline Breeding Compound, Center Hill, Fla., (Robert E. Baudy, owner).	1 male margay.
ES-165----	June 12, 1972	Tennessee Game Farm, Joelton, Tenn.	2 leopards, 1 vicuna.
ES-166----	July 1, 1972	J. Raymond Jonas, Dallas, Tex.	Trophy: parts of 1 leopard.
ES-167----	June 19, 1972	Fred M. Priest, Cleveland, Ohio, care of Cleveland Plant & Flower Co.	Leopard trophy.
ES-168----	June 8, 1972	Richard M. Jackson, Jamaica, Long Island, N.Y., care of Seaboard World Airlines, Inc.	Trophy: 1 leopard skull and bodyskin (rug mount).
ES-169----	June 22, 1972	Messrs. Peter Barrett, Rowayton, Conn.; Roger Fawcett, New York, N.Y.; Wm. Zehner, Shelter Island Heights, N.Y.	Trophies: Untanned leopard skins, 3 (1 skin by each permittee).
ES-170----	June 12, 1972	Frank M. Thompson Associates, Inc., Bradenton, Fla., for delivery to the Henry Doorly Zoo.	Leopard, zoo born, Omaha, Nebr.
ES-171----	June 14, 1972	Mrs. Patrick Russell, Esmeraldas, Ecuador, South America, care of K. Gilbreath, Harvey, La.	1 live ocelot.
ES-172----	May 25, 1972	Wild Cargo, Inc., Hollywood, Fla.	15 animals: live ocelots, margays, jaguar.
ES-173----	June 15, 1972	Ted W. True, 1 Bradley Drive, Athens, Tex.	Trophies: 3 leopards: skins, skulls.
ES-176----	June 19, 1972	Dr. Kenneth T. Pawlias, Macomb, Ill.	Trophy: leopard parts.
ES-177----	June 19, 1972	Dr. Jack R. Bandom (dentist), Whittier, Calif.	Do.
ES-178----	June 19, 1972	Mr. Harry F. Samuels, Portland, Oreg. Home: Lake Oswego, Oreg.	Do.
ES-179----	June 26, 1972	Howard D. Carper, Inglewood, Calif.	Trophy: leopard parts.
ES-180-----	do-----	James A. Exley, 6556 West 82d St., Los Angeles, Calif.	Do.
ES-181----	June 22, 1972	Denver Zoological Gardens, Denver, Colo.	1 male Andean condor.
ES-182-----	do-----	Dr. James A. Johnson and son, Mr. Edwin Phillip Johnson, High Point, N.C.	Trophies: Leopards (2) hides.
ES-183----	June 23, 1972	International Animal Exchange, Inc., Fennedale, Mich. (for delivery to the Gladys Porter Zoo).	6 cheetahs.
ES-184-----	do-----	Mr. W. D. Smith, Brisbane, Australia.	Trophy: Leopard parts.
ES-185----	June 28, 1972	Richard H. Leedy, 23 Oakwood Ave., Mechanicsburg, Pa.	Trophies: Jaguar, 1; ocelot, 1.
ES-186-----	do-----	Lilla Wesley, 1078 Hollygrove Lane, Altadena, Calif.	Leopard skin coat.
ES-187----	June 26, 1972	R. J. Exner, Wisconsin Rapids, Wis.	Trophy: Leopard parts.
ES-188----	June 27, 1972	Kenneth P. Morris, James M. Morris, W. C. Ricketts (all of Houston, Tex.).	Trophies: Leopard parts (1 skin by each permittee).
ES-189-----	do-----	H. B. Robb, Jr., 6809 Hunters Glen Rd., Dallas, Tex.	Trophy: Leopard parts.
ES-190-----	do-----	John M. Schaefer, 506 Broadway National Bank Bldg., San Antonio, Tex.	Trophy: Leopard parts, skin.
ES-191----	June 28, 1972	J. Randolph Folsom, care of father, Rev. Henry T. Folsom, Old Saybrook, Conn.	Trophy: 1 Leopard, tanned skin.
ES-192----	July 1, 1972	Wm. B. Evans, 3015 Marigold Dr., Billings, Mont.	Trophy: Leopard skin.
ES-193----	June 30, 1972	Delmore L. Huggins, Forks, Wash.	Trophies: 1 jaguar, 1 ocelot.
ES-194----	July 1, 1972	Dr. Joel Smietana, and son, Stefan H. Smietana, 1336 West Whittier Blvd., Montebello, Calif.	Trophies: 2 leopard hides/skull, 1 for each permittee.
ES-195-----	do-----	Edward G. Brittingham, Jr., and 2 sons—Edward and Tom, Laredo, Tex.	Trophies: 3 leopard parts, 1 skin by each permittee.
ES-196-----	do-----	Robert M. Brittingham and 2 sons—Robert and John, Dallas, Tex.	Do.
ES-197----	July 5, 1972	W. Hervis Ward, Crestview, Fla.	Trophy: Jaguar hide from Central America.
ES-198----	July 6, 1972	John W. McLeod, 1266 Profit Dr., Dallas, Tex.	Trophy: Leopard skin from Angola.
ES-199----	July 31, 1972	Gerald F. McNamara, Waukesha, Wis.	Trophy: Leopard skin.
ES-200----	July 15, 1972	Alfred H. Yager, Manteca, Calif.	Trophy: Leopard hide.
ES-201-----	do-----	William Kurt Hauser, 2601 Broadway, San Francisco, Calif.	Trophy: Leopard skull and tanned hide.
ES-202-----	do-----	Robert E. Sodrel, R. R. No. 2, Box 503-C, New Albany, Ind.	Trophy: Leopard skin.
ES-203----	July 13, 1972	A. R. Buckles, 4359 Clear Valley Dr., Enchino, Calif.	Trophy: Leopard parts.
ES-204----	July 21, 1972	R. A. Bartram and Kermit Krause, New Braunfels, Tex.	Trophies: 2 leopards (1 skin by each permittee).
ES-205----	July 20, 1972	William Edward Shaddock, Jr., 1427 Watkins St., Lake Charles, La.	Trophy: Leopard skin.

Endangered species importation permits	Effective date	Permittee	Product
ES-206.....do.....		Richard P. Curran, 5331 East McDonald Dr., Paradise Valley, Ariz.	Leopard skin rug.
ES-207.....do.....		Kenneth A. Frederick, 252 East Redondo Beach Blvd., Gardena, Calif.	Trophy: Leopard hide and skull.
ES-208.....do.....		Henry R. Richter, 815 Blair St., Bohemia, Long Island, N.Y.	Trophy: Jaguar, skin and skull.
ES-209.... July 21, 1972		Dr. M. E. Gadow, Westwood Blvd., Los Angeles, Calif.	Trophy: Leopard parts.
ES-210.... Aug. 1, 1972		Larry L. Cannon, USAID/ENG., Wurster, Bernardi & Emmons, Inc., APO San Francisco Calif.	1 live pet Ocelot from Vietnam (Saigon).
ES-211.... July 27, 1972		C. Robert Whita, M.D., 218 East Front St., Missoula, Mont.	Trophy: Leopard parts.
ES-212.....do.....		Norman N. Loughheed, Victoria, British Columbia, Canada, shipped to Jonas Bros., taxidermist, in Seattle, Washington.	Do.
ES-213.....do.....		William G. Suter and William G. Suter, Jr., Atlantic Highlands, N.J.	Trophies: 2 leopards, parts 1 skin by each man.
ES-214.... July 28, 1972		Craig D. Wayne, Sherman Oaks, Calif.	4 cheetahs, live-young.
ES-215.... Aug. 1, 1972		William H. Taylor, 220 San Leandro Way, San Francisco, Calif.	Trophy: Leopard parts.
ES-216.... July 31, 1972		Col. Evan B. Quiros, Laredo, Tex.	Do.
ES-217.....do.....		Robert Pelletier, 1224 Mt. Lowe Dr., Bakersfield, Calif.	Trophies: 1 jaguar, 1 leopard.
ES-218.... Aug. 3, 1973		Howard Choo, 2637 East Vernon Ave., Los Angeles, Calif.	Trophy: Leopard skin.
ES-219.... Aug. 5, 1972		Herman E. Goodwin, 1105 Highway 1, South, Plaquemine, La.	Trophy: Leopard parts.
ES-220....do.....		A. C. Coumes, Twin C Ranch, Dobbin, Tex.	Do.
ES-221.....do.....		Louis H. Stumberg, 812 Eventide, San Antonio, Tex.	Trophies: 2 jaguars, 2 ocelots.
ES-222.....do.....		Mr. and Mrs. James S. Benton, 222 East Wisconsin Avs., Lake Forest, Ill.	Trophies: Leopards, parts of 2.
ES-224....do.....		Adrian Kachel, Magnolia, Tex.	Trophy: Leopard parts.
ES-225....do.....		Frederick H. Pollard, Graenville, Del.	Do.
ES-230.... Aug. 9, 1972		Val D. Adamski, M.D., 1313 Summer Range Rd., De Pere, Wis.	Do.
ES-231....do.....		Jerry Groseclose, Anchorage, Alaska	Do.
ES-232....do.....		Archer I. Schweitzer, Ellicott City, Md., Albert R. Schweitzer, Arbutus, Md.	Trophy: Leopard, 1.
ES-233....do.....		Ralph Soace, Sussex, N.J.	Trophy: Leopard parts.
ES-234....do.....		Duane Hamm, New York State Department of Environmental Conservation, Middleburgh, N.Y.	Do.
ES-235.... Aug. 10, 1972		Veri Bleach, Sarasota, Fla.	Do.
ES-236....do.....		Gurney Wastcott, Atlanta, Mich.	Do.
ES-237....do.....		Claude Mowery, Atlanta, Mich.	Do.
ES-240.... Aug. 11, 1972		F. J. Bremer, Hot Springs, Ark.	Do.
ES-242.... Aug. 12, 1972		Mr. Kurt C. Leins, Syracuse, N.Y.	Trophy: Leopard parts.
ES-243.... Aug. 11, 1972		Mr. C. J. McElroy, Inglewood, Calif.	Trophy: Leopard parts from Angola.
ES-244....do.....		do	Trophy: Leopard parts from Zambia.
ES-245.... Aug. 15, 1972		Dr. George A. Patten, 314 Middle St., Portsmouth, N.H.	Trophy: Leopard parts.
ES-248.... Aug. 18, 1972		John S. Newkam, Jr., M.D., 140 West Louthier St., Carlisle, Pa.	Trophies: 1 jaguar, 1 ocelot.
ES-250.... Aug. 23, 1972		Richard W. Ripple, 4259 Panini Loop, Honolulu, Hawaii.	Trophy: Leopard parts.
ES-251.... Sept. 1, 1972		Richard F. Davis, San Leandro, Calif.	Do.
ES-252.... Aug. 26, 1972		Mr. Jerome S. Held, 830 Willis Ave., Albertson, N.Y.	Do.
ES-253.... Aug. 25, 1972		William H. Marshall, Jr., M.D., 782 Mayten Tree Ct., Sunnyvale, Calif.	Do.
ES-254.... Sept. 1, 1972		Dr. James R. Tanzola, Saddle River, N.J.	Do.
ES-255.... Aug. 28, 1972		San Diego Zoological Garden, San Diego, Calif.	Male, live, North Chinese leopard.
ES-256.... Aug. 30, 1972		Kenneth B. Haynes, 333 Sunset Dr., Fort Lauderdale, Fla.	Do.
ES-258.... Aug. 31, 1972		Gary Joel Ganz, Beverly Shores, Ind.	Do.
ES-259.... Sept. 1, 1972		William F. Weigel, 256 Loring Avenue., Pelham, N.Y.	Do.
ES-261.... Sept. 5, 1972		Fred J. Davis, Jr., M.D., Susanville, Calif.	Do.
ES-262....do.....		Frederick W. Koehler, Jr., Farmingdale, N.Y.	Do.
ES-263.... Sept. 7, 1972		Howard N. Gilmore, 400 Medford St., Los Angeles, Calif.	Do.
ES-265....do.....		Eugene Logghe, Fraser, Mich.	Do.
ES-266....do.....		E.R. Moore, Thousand Oaks, Calif.	Do.
ES-267....do.....		Jack L. Alter, M.D., Rock Fall, Ills.	Do.
ES-268.... Sept. 8, 1972		James O. Winston 2901 Humble Bldg., Houston, Tex.	Do.

ECONOMIC HARDSHIP, PUBLIC LAW 91-135, SEC. 3(b) 50 CFR 17.12(a)—Continued

Endangered species importation permits	Effective date	Permittee	Product
ES-269....	Sept. 7, 1972	Mrs. H. Brockie, Dallas, Tex., P.O. Box 123....	Trophy: Leopard parts, skull/skin, Republic of Zambia, Africa.
S-270.....	do.....	James Brockie, Dallas, P.O. Box 123.....	Do.
S-271.....	Sept. 11, 1972	Byron Brumbaugh, 2693 Melbourne St., Salt Lake City, Utah.	1 live Cheetah.
S-272.....	Sept. 18, 1972	Errol C. O'Brien, 10933 South Central Ave., Oak Lawn, Ill.	Trophy: Leopard parts.
ES-273.....	do.....	Randall F. Torrey, 407 Gulf Life Tower, Jacksonville, Fla.	Do.
ES-274.....	do.....	Mr. and Mrs. Robert W. Bergstrom, 3900 Southwest 107th Ave., Miami, Fla.	Trophy: Parts of 1 leopard.
ES-275.....	Sept. 19, 1972	Lt. Tom Shirley, 2531 Northwest 170 St., Opa Locka, Fla.	Trophy: Jaguar dried skin.
ES-276.....	do.....	Robert B. Kullman, 35 Willow Rd., Woodmere, N.Y.	Trophy: Leopard parts.
ES-277.....	Sept. 21, 1972	Loren D. Stark and Mr. James E. Lyon, care of 2320 Southwest Freeway, Houston, Tex.	Trophies: Leopard skins; 1 skin by each permittee.
ES-278.....	do.....	Richard R. Stander, Sr., Mansfield, Ohio.....	Trophy: Leopard parts.
ES-281.....	Sept. 25, 1972	A. W. Minshall, Mississauga, Ontario, Canada...	Trophy: Leopard parts, to enter at Seattle on way to taxidermist.
ES-282.....	do.....	A. R. Buckles, 4359 Clear Valley Dr., Encino, Calif.	Trophy: Jaguar.
ES-283.....	Sept. 25, 1972	Richard P. Neils, Tacoma, Wash.....	Trophy: Leopard skin.
ES-284.....	do.....	Jack O. L. Saunders, 1630 Camino del Rex, Las Cruces, N. Mex.	Trophy: Leopard, mounted.
ES-285.....	Sept. 26, 1972	D. G. Matthews, Jr., Hamilton, N.C.....	Trophy: Leopard parts.
ES-286.....	Sept. 28, 1972	N. C. Herndon, Jr., Houston, Tex.....	Do.
ES-287.....	Sept. 27, 1972	Dante Marrocco, 6027 Via Sonoma, Palos Verdes Peninsula, Calif.	Do.
ES-288.....	Oct. 6, 1972	Roy H. Shipley, 7300 Hampshire Dr., St. Louis, Mo.	Do.
ES-289.....	Oct. 26, 1972	William M. Siegenthaler, attorney at law, Artesia, N. Mex.	Do.
ES-290.....	Oct. 11, 1972	Robert C. Stump, Jr., Route 3, Tomah, Wis.	Do.
ES-291.....	Oct. 16, 1972	R. E. Mellish, Box 1123, Williamsport, Pa.....	Do.
ES-293.....	Oct. 26, 1972	John H. Epstein, 765 West Gages Lane, Lake Forest, Ill.	Import Leopard trophy.
ES-294.....	Nov. 8, 1972	Russell J. Wildman, P.O. Box 145, Peru, Ind.	Do.
ES-295.....	Nov. 3, 1972	John G. McDonough, 2001 Kirby Dr., Suite 913, Houston, Tex.	Do.
ES-296.....	Nov. 7, 1972	George V. Launey, M.D., 4536 South Lindhurst, Dallas, Tex.	Do.
ES-297.....	Nov. 9, 1972	Dr. John S. Schweppe, 211 East Chicago Ave., Chicago, Ill.	Do.
ES-298.....	do.....	Earl Brannan, Jr., 12339 Northeast 18th St., Vancouver, Wash.	Do.
ES-299.....	Nov. 13, 1972	Mrs. C. E. Brehm, P.O. Drawer 648, Mt. Vernon, Ill.	Do.
ES-300.....	Nov. 30, 1972	Carl F. Tagge, C-14, Bank of Southwest Bldg., Houston, Tex.	Do.
ES-301.....	Nov. 14, 1972	Robert Earl Ross, 3641 North Elston Ave., Chicago, Ill.	Do.
ES-302.....	do.....	Robert R. Dee, 2331 Aegean Ave., Idaho Falls, Idaho.	Do.
ES-303.....	Nov. 27, 1972	Dr. Paul F. J. New and Rufus Cushman, Marblehead, Mass.	Import Leopard trophies (2), 1 skin by each permittee.
ES-304.....	Nov. 30, 1972	John W. Buckley, Lakeville, Conn.....	Import Leopard trophy.
ES-305.....	Dec. 4, 1972	Walter P. Ulicny, 144 Hillcrest Ave., Summit, N.J.	Do.
ES-307.....	Dec. 12, 1972	Mr. Gerald L. Rosow, 24 Hamlin Dr., West Hartford, Conn.	Do.
ES-308.....	Dec. 14, 1972	Joseph W. Cavallaro, M.D., Route 3, Box 330, Hickory, N.C.	Do.
ES-310.....	Dec. 22, 1972	Geo. Biddulph, 26005 Butternut Ridge Rd., North Olmsted, Ohio.	Do.
ES-312.....	Dec. 14, 1972	Geo. J. Brown and C. W. Gadda, Reno, Nev....	Import leopard trophies (2); 1 skin/skull by each permittee.
ES-313.....	Dec. 22, 1972	Joseph W. Quarto, 5845 Jurupa Ave., Riverside, Calif.	Trophies, parts of jaguar/ocelot (2).
ES-314.....	Jan. 19, 1973	Wm. Gene Knight, 111 South Main St., Charleston, Mo.	Import leopard trophy.
ES-315.....	Dec. 22, 1972	Jack Selle, 200 Ann Arbor Rd., Plymouth, Mich.	Do.
ES-318.....	do.....	L. G. Sullivan, 300 Soscol Ave., Napa, Calif.....	Do.
ES-319.....	do.....	Clifford A. Botway, 460 Beechmont Dr., New Rochelle, N.Y.	Do.
ES-320.....	do.....	Garry Weber, 1800 LTV Tower, Dallas, Tex.....	Do.
ES-321.....	do.....	Perry T. Demming, 2027 Sourek Rd., Akron, Ohio.	Do.

ECONOMIC HARDSHIP, PUBLIC LAW 91-135, SEC. 3(b) 50 CFR 17.12(a)—Continued

Endangered species importation permits	Effective date	Permittee	Product
ES-326	Jan. 19, 1973	Dr. Addison L. Messer, St. Petersburg Medical Clinic, St. Petersburg, Fla.	Import leopard trophy.
ES-327	Jan. 29, 1973	Ms. Sheila Levin, 26521 Aric Lane, Los Altos, Calif.	Import leopard skin coat.
ES-328	Mar. 22, 1973	Herbert G. Erhart, M.D., P.O. Box 71, Springerville, Ariz.	Import leopard trophy.
ES-329	Jan. 29, 1973	W. L. Price, Amarillo National Bank Bldg., Amarillo, Tex.	Do.
ES-330	Feb. 6, 1973	George A. Breen, and Mr. Robert R. Milliken of Emfenton, Pa.	Import leopard trophies (2) 1 skin by each permittee.
ES-332	Jan. 29, 1973	William T. Warren III, P.O. Box 15723, Nashville, Tenn.	Import leopard trophy.
ES-334	do	Harry S. Rinker, Newport Beach, Calif.	Do.
ES-335	Feb. 5, 1973	Carrel Morton, in care of Morton's Nursery, Rt. No. 7, Box 128, Yakima, Wash.	Do.
ES-336	Feb. 13, 1973	Roy R. Brown, Rt. No. 1, Hilltop Rd., Louisville, Tenn.	Do.
ES-337	do	William B. Cockcroft, D.D.S., 555 Perkins Extended, Memphis, Tenn.	Do.
ES-342	Feb. 15, 1973	William R. Knobloch, 149 Emery Dr., Stamford, Conn.	Do.
ES-343	do	Wallace W. Bednarz, M.D., 1527 Harding Ave., Williamsport, Pa.	Do.
ES-344	Feb. 26, 1973	Dr. W. M. Lockard, Jr., 3041 Rollingstone Rd., Oklahoma City, Okla.	Do.
ES-345	do	Clarence V. Thomas, in care of Holiday Inn of Sharon, West Middlesex, Pa.	Do.
ES-346	do	J. D. Lindsey, care of Lindsey Bonded Warehouse, Bernice, La.	Import 2 leopard trophies (2).
ES-347	do	Willard W. Cass, Jr. (judge), 72 Pæri St., Frewsburg, N.Y.	Import leopard trophy.
ES-348	do	John G. Dillon, care of SoGen International Corp., 595 Madison Ave., New York, N.Y.	Do.
ES-349	do	Andy M. Cidfield, P.O. Box 68, June Lake, Calif.	Do.
ES-350	do	James Mack Eplen, 2426 Shoreline Dr., Abilene, Tex.	Do.
ES-351	do	A. E. Leonard, and Kenneth E. Leonard, 134 Huizar Rd., San Antonio, Tex.	Import leopard trophy (2).
ES-352	do	F. J. Dyke, Jr., P.O. Box 758, Houston, Tex.	Import leopard trophy.
ES-353	do	John H. Wooters, Jr., 206 Walnut Bend Lane, Houston, Tex.	Do.
ES-356	Feb. 28, 1973	Peter H. Havens and John P. Havens, sons of Dr. Havens, Philadelphia, Pa.	Import leopard trophies (2); 1 skin by each permittee.
ES-357	Mar. 6, 1973	Kenneth Elwood Norman, 2530 South Jackson, Denver, Colo.	Import Leopard trophy.
ES-358	Mar. 5, 1973	Larry R. Price, D.D.S., 1800 North Mesa at Rim Rd., El Paso, Tex.	Do.
ES-359	Mar. 2, 1973	Ben C. Stimpson, care of Gulf Lumber Co., P.O. Box 1663, Mobile, Ala.	Import leopard trophies (2).
ES-360	Mar. 2, 1973	Ross Grady, care of Grady Buick Co., Inc., P.O. Box 2606, Mobile, Ala.	Import leopard trophy.
ES-361	Mar. 5, 1973	L. S. Thompson III, M.D., and Ben H. Carpenter, both of Dallas, Tex.	Import leopard trophies (2); 1 skin by each permittee.
ES-362	Mar. 8, 1973	John L. Schoellkopf, 1250 Main Tower, Dallas, Tex.	Import leopard trophy.
ES-363	do	Ramon Bacerra Godinez, Lope de Vega No. 170, Guadalajara, Jalisco, Mexico.	Do.
ES-364	do	Dr. Wayne Dehoney, pastor, Walnut Street Baptist Church, Louisville, Ky.	Do.
ES-366	May 23, 1973	W. H. Slikker, 14222 East Louise Ave., Ripon, Calif.	Do.
ES-367	May 12, 1973	Homer R. Denius, 2170 Southeast 17th St., Fort Lauderdale, Fla.	Do.
ES-372	May 13, 1973	Mr. and Mrs. Willis H. duPont, 1860 South Ocean Blvd., Palm Beach, Fla.	Import leopard trophies (2), 1 for each permittee.
ES-373	Mar. 16, 1973	William C. Kyle, Rt. 8, Robin Hood Rd., Winston-Salem, N.C.	Import leopard trophy.
ES-374	do	Alton Braddock, and son Tom Braddock, 426 North Church St., Hendersonville, N.C.	Import leopard trophy (2).
ES-375	do	Clinton Ingram, 2435 East 15 St., Panama City, Fla.	Import leopard trophy.
ES-376	do	E. M. Cherry, P.O. Box 628, Cabot, Ark.	Do.
ES-377	do	J. C. Spink, P.O. Box 2340, Jacksonville, Fla.	Do.
ES-378	do	Carlton P. Maddox, 320 East Adams St., Jacksonville, Fla.	Do.
ES-379	do	A. H. Robinson, Al Robinson III, John H. Carothers, and Charles Kuper, Jr. all of Texas.	Import leopard trophy (4) (1 skin/skull 1 for each permittee).

Endangered species importation permits	Effective date	Permittee	Product
ES-380.....	Mar. 20, 1973	A. M. Quattlebaum, 1510 Madison Ave., Florence, S.C.	Import leopard trophy.
ES-381.....	do.....	Frank Pearce, 1516 Cherokee Rd., Florence, S.C.	Do.
ES-382.....	Mar. 21, 1973	W. F. Myers, 6732 North Joshua Tree Lane, Paradise Valley, Ariz.	Do.
ES-383.....	do.....	Leon J. Levitz, 2801 West Indian School Rd., Phoenix, Ariz.	Do.
ES-384.....	do.....	George Krantz, care of Steak Knife Restaurant, 11703 West Bluemont Rd., Milwaukee, Wis.	Do.
ES-385.....	do.....	C. E. Justice, 1888 Dunellon Rd., Lyndhurst, Ohio.	Do.
ES-386.....	do.....	W. Ray Kromer, 5259 Meadow Wood Blvd., Lyndhurst, Ohio.	Do.
ES-387.....	Mar. 26, 1973	Howard Elmore, father, John Elmore, Brawley, Calif.	Do.
ES-388.....	do.....	A. G. Bromiley, Route 3, Box 12, Covington, La.	Import leopard trophy (2).
ES-389.....	do.....	do.....	Import leopard trophy.
ES-390.....	Mar. 22, 1973	Jack E. Johnson, 301 Havenhurst Dr., San Antonio, Tex.	Do.
ES-391.....	Mar. 23, 1973	Pablo L. Deuts, Jr., Mexico.....	Do.
ES-392.....	do.....	Fred Parnell, 6755 Airline Highway, Baton Rouge, La.	Do.
ES-393.....	Mar. 26, 1973	Radcliffe Killam, P.O. Box 499, Laredo, Tex.	Do.
ES-394.....	do.....	Joseph W. Cavallaro, P.O. Box 602, Conover, N.C.	Import jaguar trophy.
ES-395.....	do.....	E. W. Drager, 1518 Newman Rd., La Marque, Tex.	Import leopard trophy.
ES-396.....	do.....	Dr. Frank C. Hibben, University of New Mexico, Albuquerque, N. Mex.	Import leopard (skin and skull).
ES-397.....	do.....	Mr. and Mrs. Watson Keep Blair, 6710 Clayton Rd., St. Louis, Mo.	Import leopard trophy (skin/skull, 2).
ES-398.....	do.....	William O. Carter, 6231 Treschwig Rd., Spring, Tex.	Import leopard trophy (skin/skull).
ES-399.....	Mar. 27, 1973	Dean W. Larson, M.D., 210 South Grand Ave., Glendora, Calif.	Import parts of 1 tiger skin—rug; parts of 1 leopard skin—rug.
ES-400.....	do.....	Alfred W. Negley, 110 East Crockett St., San Antonio, Tex.	Import leopard trophies (2).
ES-401.....	do.....	Calvin D. Click, 2421 Westcreek Lane No. 50-H, Houston, Tex.	Import leopard trophy.
ES-402.....	Mar. 28, 1973	Thomas J. Coughlin, 1 James Rd., Duxbury, Mass.	Import leopard skins (2).
ES-403.....	do.....	Emil J. Babarz, 6040 West Lawrence Ave., Chicago, Ill.	Import leopard trophy.
ES-404.....	Mar. 29, 1973	Frank R. Hart, 1477 South Manchester Ave., Anaheim, Calif.	Do.
ES-405.....	do.....	Thomas A. Martin, 127 Beverly Dr., San Antonio, Tex.	Do.
ES-406.....	do.....	Mr. and Mrs. E. Norman Flayderman, New Milford, Conn., and John J. Malloy, Danbury, Conn.	Import leopard trophies (3).
ES-407.....	do.....	Robert W. Kubick, 4627 Taft Dr., Anchorage, Alaska.	Import leopard trophy.

Note: Total number of hardship exemptions: 267.

Mr. POTTER. I take it that it is the position of the Department that there ought not to be mandatory public hearings before issuance of a hardship exemption and I suppose that is an issue that will have to be resolved by the committee.

Would you in any case have any objection to a requirement being written into the bill to make it mandatory that the Department publish notice in the Federal Register of receipt of application for project exemption?

Mr. REED. The problem is simply one of paper, Mr. Potter. If the committee feels that would be in the broad public interest, we can do it.

Mr. POTTER. Would there be any substantial amount of appreciable paper work involved?

Mr. REED. It is the usual bureaucratic problem of getting anything published in the Federal Register. It is nothing we cannot overcome.

Mr. POTTER. Is it your feeling that, and I am sure you are aware of the definition of the term "import" in H.R. 37, is it any different from that of H.R. 4758? Is it your reading that the definition in H.R. 4758 is at least as broad as that in H.R. 37?

Mr. REED. Ours we feel is broader because import includes commerce with a foreign country, entry to a foreign trade zone and transshipment to any portion of the United States without customs entry.

As you know, this was very much on our minds as a result of the superb agents of Mr. Bavin being able to break the case involving the trading of spotted cats skins recently.

It is the transshipment which we have been directly involved in and concerned about for some time. Both the convention and this bill will give us powers that we do not have at this time and would greatly strengthen the effort to prevent this continuing traffic in illegally taken animals.

Mr. POTTER. The International Association of Fish and Game Commissioners has recommended there be some sort of cooperative Federal-State program using matching grants.

Is it feasible and if not why not?

Mr. REED. We think that the endangered species of a State should be the primary concern of that State.

It is our hope that recovery plans and management of those species will become a fundamental part of the State wildlife agencies primary purposes, and we feel it is legitimate—of legitimate concern—for them to pay the full cost of the protection of that animal within their boundaries.

The States can now use Federal aid funds, land and water conservation funds, if this bill passes, to acquire habitat, and to involve themselves in management on a matching basis.

Mr. POTTER. Does H.R. 4758 in your view give you ample authority to reintroduce endangered species in areas from a State in which they are extinguished?

Mr. REED. Yes, sir. However, I think the full cooperation of the States would be necessary before embarking on a plan to reintroduce animals.

The bill gives us latitude for that, Mr. Potter.

Mr. POTTER. Are you satisfied that under the language of the treaty we will have the authority to restrict the importation of appendix II species in the event that we are dissatisfied with the management program of the exporting country?

Mr. BAYSINGER. I did not understand the last part of your question.

Mr. POTTER. If we think that an African country is not handling the spotted cats very well but they are under appendix II, do we retain the right under the treaty and under implementing legislation to say well, no, even if it is on appendix II we are not going to let them be brought in?

Mr. BAYSINGER. Yes. Even though a species was on appendix II which would permit commercial trade in that species, and even though the country of origin had issued an export permit, we would still have the authority to control the import of that species into this coun-

try if it were designated as endangered under the provisions of H.R. 4758.

Mr. POTTER. That is the way I read it.

Mr. REED. Exactly. You read it correctly, and again, it is one more strong point in favor of this type of bill.

Mr. DE LA GARZA. I did not hear your answer. Would you repeat it?

Mr. REED. The answer is "Yes," Mr. de la Garza, we would be able to take an animal on the worldwide appendix II and move it to our list, one of our lists and prevent its import into the United States. We would have that flexibility.

Mr. DE LA GARZA. Thank you.

Mr. POTTER. You mentioned the 1940 convention having to do with Western Hemisphere in your statement. On page 10 of your statement you say this bill offers only a partial solution to the problem of protecting endangered animals. It does seem, though, and I will not ask you to comment at length on this right now because you may want to think about it, that that convention has in effect never been implemented in this country.

Mr. REED. That is correct.

Mr. POTTER. And I would like your considered opinion as to whether or not some sort of implementing legislation is necessary. To put it another way, whether the existing legislation if enacted plus the convention if ratified would completely cover the ground covered by the 1940 convention?

Mr. REED. Our position is "yes," it would. The combination of the passage of a bill such as H.R. 4758 plus the ratification of the convention would more than cover the ground of the Western Hemisphere.

Mr. POTTER. Well, you might want to think about that.

Mr. REED. We will review it again, and if we are of a different opinion, provide additional informaton.

Mr. DINGELL. The Chair will see to it that we get similar comment from other agencies appearing here before us.

Mr. Secretary, I am curious. Would it not be well at least in view of the fact that no implementing legislation has ever been introduced or enacted previous to Mr. Roybal's bill, H.R. 2169, to this committee to include at least mention of the bill in the sections dealing with the conventions involved and perhaps include appropriate language in the report indicating that this legislation essentially to implement not only the other treaties and the international policies, but also to implement the convention with regard to the Western Hemisphere?

Mr. REED. We mention it, of course, on page 2, line 7 of our H.R. 4758 bill. We simply note the fact that it is there, but the chairman's point is well taken and certainly is worthy of serious consideration.

Mr. DINGELL. Perhaps you might want to give some thought and let us have the benefit of your wisdom on this, Mr. Secretary because it does appear that we ought not have any doubt as to the fact that we are seeking also to see to it that its provisions are carried forward.

[Additional material supplied follows:]

CONVENTION ON NATURE PROTECTION AND WILDLIFE PRESERVATION IN THE WESTERN HEMISPHERE

(56 Stat. 1354: Ratified April 15, 1941)

H.R. 2169, the "Nature Protection Act" would implement the Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere and

amend the original 1966 Endangered Species Act. The bill would prohibit any person within any place subject to the jurisdiction of the United States from hunting, capturing, killing, taking, transporting, selling or purchasing any fish or wildlife listed in the Annex to the Convention. H.R. 2169 also provides that in submitting the list of species for the Annex, the Secretary of the Interior shall include the species found by him to be rare or endangered under the terms of the 1966 Endangered Species Act. While this Department subscribes to the objectives of H.R. 2169, we believe that it offers only a partial solution to the problems associated with the preservation and conservation of endangered animals. In our letter to the Chairman, Committee on Merchant Marine and Fisheries, dated March 23, 1973, providing the Department's views on H.R. 37 and related bills, we recommend enactment of H.R. 4758, in lieu of H.R. 2169, as a comprehensive approach to the protection, preservation and conservation of these animals.

We believe existing laws administered by the Department of the Interior are sufficiently comprehensive to permit the practical implementation of all the general purposes and objectives of the Convention affecting the Department. In addition, with respect to endangered animals, the provisions of H.R. 4758 and the Convention on International Trade in Endangered Species of Wild Fauna and Flora more than cover the provisions of the Convention on Nature Protection.

For these reasons we recommended against enactment of H.R. 2169, and we have considered enactment of additional legislation for further implementation of the Convention on Nature Protection to be unnecessary. We are not, however, opposed to amending H.R. 4758 to include general language implementing the Convention on Nature Protection insofar as the Convention relates to endangered species pursuant to the Endangered Species Conservation Act of 1973.

Mr. POTTER. Would you supply for the record, Mr. Reed, the Department's estimate for its program cost over the next 5 years if 4758 is enacted and include within that your estimate of the program costs if the bill were to be amended to include protection of flora?

Mr. REED. Yes, sir; it will only be a projection at this time because we are nowhere near enough along to have firm figures.

The Department of Agriculture shares a great deal of that burden with us, but we will give you our projections.

Mr. POTTER. We will ask the same question when they appear.

[The information to be supplied follows:]

The information requested was forwarded to the Office of Management and Budget but was not cleared for release to the Committee in time to be printed.

Mr. POTTER. In H.R. 37, there is language which gives Interior the authority to prohibit the importation of nonendangered species if those species could be confused with those of endangered species. In other words, if there is something that could be brought in and you could not easily tell whether it was endangered or not endangered, we give you the authority to exclude everything.

Do you have serious problems with that?

Mr. REED. I see no serious problems. There are some look alikes which are almost hopeless to separate. For example, the turtle skins

coming from Mexico or Central America could be greens or hawk bills or Ridleys. Two of these are endangered and the other is not.

The desirability of using skins of creatures such as sea turtles for shoe leather, in my opinion, is dubious to begin with. The small amount of leather available from each turtle, the waste involved, and the precarious position of most populations of sea turtles give serious cause for concern. Add to that the difficulty of separating the skins of endangered species from the very similar skins of those which are not yet endangered, and the large volume of skins which cross our borders, the problems faced by those trying to enforce our laws becomes apparent. I feel the authority to deal with look alike skins would be desirable. This problem was recognized by the people who negotiated the recently concluded Convention on International Trade in Endangered Species of Fauna and Flora. That Convention gives authority to regulate the trade in look alike skins when necessary to enforce restrictions on similar looking species which are on the appendixes.

Mr. DINGELL. Mr. Secretary, we have in existing law a requirement that species of this kind only enter through certain ports which would be designated so that you would not have to have expert scientists or animal biologists at every one of the potential landing places in the country. But is that authority sufficient for you to meet the problem that you pose before us at this time, or would it be useful to you to have the additional assistance of being able to license importers of these kinds of species as to control absolutely who should bring them in?

That is provided for in H.R. 37; the importers are to be licensed.

Do you need that kind of authority and would you like to have a little time to respond to this particular question?

Mr. REED. No; I really do not. On this, of course, I look to Clark Bavin for clarification. He says there is a great deal to be said for this procedure from an enforcement standpoint.

As you well know, Mr. Chairman, if we are really going to protect endangered species, there are two things the world has to do: stop the destruction of habitat, and beef up enforcement. Mr. Bavin strongly indicates that the provisions in H.R. 37 are well worth considering in this bill.

Mr. DINGELL. Well, I am particularly anxious with the limited budget that you are afflicted with that you should have an adequacy of funds to do the job you have to do and that is a source of concern to me. That is why I would like to have accurately before this committee the question of licensing.

Mr. Bowen?

Mr. BOWEN. No questions.

Mr. DINGELL. Mr. Breaux?

Mr. BREAU. Mr. Secretary, will it necessitate having this piece of legislation enacted before we can change endangered species we have designated in the treaty?

Mr. REED. No. As I indicated earlier, the amendment of the appendixes to the convention is an operation separate and apart from the amendments of either our existing list of endangered species or the list that would be provided for under the new legislation we are discussing today.

However, we would hope to have the species we list as compatible as possible with the species listed in the appendixes of the convention. You will recall that I indicated we could be more restrictive with the

domestic species we list, but could not be less restrictive. That is to say, we could prohibit this country from engaging in commercial trade in species on appendix II of the convention—if we had good cause to do so—but we could not allow such trade in species on Appendix I, unless the United States chose to reserve with regard to that species. Such reservations are permitted under the convention, but I hope no nation chooses to exercise that option.

The Convention will have to come into force and the mechanics for amending the appendixes will have to be set up before any of the species now on those appendixes can be removed or any others added. The Convention will not come into effect until the 10th nation has deposited its Articles of Ratification with the Depositary Government. The United Nations Environmental Unit will have to staff up before the mechanics of amending the appendixes can be put into operation.

Mr. BREAU. Mr. Chairman, I would like to introduce for the record a statement given by the Director of the Wildlife and Fisheries Commission for the State of Louisiana and ask that the Secretary be given the opportunity to look at it and make comments at a later date.

Mr. DINGELL. Without objection, so ordered. I am sure the Secretary will cooperate.

Mr. Secretary, you do not need any statutory authority to move animals from Appendix I to Appendix II, and vice versa, do you?

Mr. REED. No, sir, we do not. It is a judgment factor, and one that I think successive Secretaries of the Interior, properly guided by the expertise within the Department, should be able to make.

Mr. DINGELL. Mr. Secretary, the committee thanks you for your very helpful testimony this morning. It may be necessary for us to submit additional questions to you, in writing. I am sure you will cooperate.

Mr. REED. Thank you very much, Mr. Chairman and members of the Committee.

Mr. DINGELL. We thank you.

The committee welcomes our former colleague and good friend, the very able Administrator, the Deputy Administrator of NOAA, Mr. Howard Pollock.

We are happy to welcome you back to the committee. Mr. Pollock, please identify those accompanying you for the record.

STATEMENT OF HOWARD POLLOCK, DEPUTY ADMINISTRATOR, NOAA, U.S. DEPARTMENT OF COMMERCE, ACCOMPANIED BY DAVID WALLACE, ASSOCIATE ADMINISTRATOR; JAMES BRENNAN, ACTING GENERAL COUNSEL; ROBERT SCHÖNING, DEPUTY DIRECTOR OF THE NATIONAL MARINE FISHERIES SERVICE

Mr. POLLOCK. Thank you, Mr. Chairman. I would like to have come forward Mr. David Wallace, Associate Administrator, Mr. James Brennan, Acting General Counsel, and Mr. Robert Schoning, Deputy Director of the National Marine Fisheries Service.

Needless to say, I am very pleased to be here today with my old committee and colleagues to discuss with the committee the President's initiative with regard to the protection, conservation and propagation of endangered species.

H.R. 4758 is a significant step forward in the conservation field. It will fill major gaps in existing law and will more effectively bring to bear upon the problem of endangered species, the expertise and facilities of the two Federal agencies, the Department of Commerce and the Department of Interior, most knowledgeable and best prepared to conserve and protect fish and wildlife.

Briefly, H.R. 4758 will provide earlier identification of endangered species and authorize protective measures to be undertaken before a species is so depleted that its recovery is difficult or impossible. Moreover, it will make the unauthorized taking of endangered species a Federal offense, and it will expand the prohibitions against trafficking in such species.

H.R. 4758 is needed to reinforce NOAA's conservation activities, and we welcome this bill and strongly support its enactment. It aims are fully in accord with ours.

We are concerned about all aspects of the marine environment and the species which inhabit it, and are involved in conservation activities to protect many of these species. The additional authorities this bill will place in our hands are necessary and will be put to good use.

I would like now to discuss in more detail some of the important changes which will be wrought by this bill. The existing Endangered Species Act divides fish and wildlife into "native fish and wildlife" and "other fish and wildlife." For the present law to have any effect on native species of fish and wildlife, they must be found to be actually "threatened with extinction." In the case of "other fish and wildlife," one must find that species is "threatened with worldwide extinction." Once these determinations are made, the Secretary of the Interior is given various powers to acquire lands and use funds to conserve, protect, and restore the species. However, his powers to place restrictions on the taking of such species or any trafficking therein, are limited. All that is required by the present law with respect to endangered species of native fish and wildlife is that the Federal agencies, in carrying out their activities, seek to protect such species to the extent practicable. As to the other species of fish and wildlife, the Secretary's power is limited to forbidding imports.

Clearly, the authorities of the present act are far too limited. Moreover, the act comes into play only when the species or subspecies is pushed to the brink. This is obviously unsatisfactory because it may be impossible for a species to recover when remedial action is too late. Extinction may be inevitable regardless of any protective measures man may take when the species is reduced to very low numbers.

H.R. 4758 wipes out the artificial distinction between "native" and "other" fish and wildlife so that maximum protection measures can be applied to all fish and wildlife to the extent that the United States can exercise jurisdiction. The bill retains the existing category of presently "threatened with extinction," and adds a new category of animals, those which "will likely within the foreseeable future become threatened with extinction." Moreover, it provides that action may be taken if either condition exists throughout a significant portion of the animal's range and does not require a finding of worldwide endangerment. This last modification recognizes the fact that a species or subspecies may be threatened because of events taking place in a small but significant part of its range.

As to a species or subspecies which is presently threatened with extinction, section 4(a) of H.R. 4758 provides for a ban on the taking of such species or subspecies, its importation into or export from the United States, and on trafficking therein in interstate or foreign commerce for commercial purposes by persons subject to United States jurisdiction. Most of these acts are not prohibited under present law. At the same time, the bill contains appropriate exceptions to section 4(a) prohibitions in order to permit taking for scientific purposes provided that certain criteria are met.

Section 4(b) of the bill is equally important. It authorizes the Secretaries to issue regulations for the conservation, protection, restoration and propagation of a species or subspecies likely within the foreseeable future to become threatened with extinction. This section gives the Secretaries full authority to issue whatever regulations may be needed to conserve and protect a species. Most importantly, this can be done at an early stage before any adverse trends have become irreversible. Where controls on taking are indicated, they can be applied. Where a moratorium or ban is preferable, it can be imposed. Upon meeting certain criteria, exceptions to section 4(b) regulations may be made for certain scientific purposes.

We recognize that the new authorities sought will to some extent remove from the States certain powers over fish and wildlife which they now exercise. However, we believe that the fullest protection of endangered species can be effected by a uniform approach at the Federal level. At the same time it is clear that the States do have a legitimate interest in protecting fish and wildlife within their borders. We believe that for full and effective enforcement of regulations under the proposed bill, the full cooperation of the States will be needed. Thus, section 8 requires the Secretaries to cooperate with the States to the maximum extent practicable in carrying out the program envisioned by the bill and provides for agreements with the States for the administration and management of any area established for the conservation, protection, restoration and propagation of endangered species.

Let me now turn to the major procedural modification which the new bill would make in existing law. I refer to the provision in the bill placing authority under the amended Endangered Species Act in the Department of Commerce for the protection of those species of fish and wildlife which are subject to the jurisdiction of NOAA. Thus, we would have responsibilities under the bill to protect marine fish and shellfish, members of the order Cetacea, and members other than walrus of the order Pennipedia. This assignment logically follows the marine fisheries responsibility of NOAA in the Department of Commerce, pursuant to the provisions of reorganization Plan No. 4 of 1970.

As scientists, we are vitally interested in conserving and studying marine species for the benefit of present and future generations. The personnel who staff our laboratories recognize the complex interdependence of marine species and the need to protect them. They also know the importance to man of expanding his knowledge of the oceans and their living things and the tremendous satisfaction and esthetic pleasure which one can derive from the observation of the seas' creatures. But neither knowledge nor pleasure can be derived from a species

which has been heedlessly forced into extinction. Nor can the substantive economic benefits which the oceans offer be obtained.

In NOAA we are aware of the many pressures on marine species. We know that the best interests of both the sport fishermen and the commercial fisheries are best served by conservation methods such as those proposed in this legislation.

Nevertheless, because of our regulatory experience, we know that occasions arise when individuals may fail to respond adequately to a developing downward trend in the stocks of a species. In such cases, the Government should step in to assure that conservation measures are applied in the long-term interests of all. We recognize it to be both a duty and an obligation to future generations and a necessity if the real benefits from the seas are to be obtained.

I would like to discuss briefly certain other endangered species bills which have been introduced in the 93d Congress and which are now before the committee. All of these bills are designed to revise the existing law for the protection of endangered fish and wildlife resources.

First, I will discuss collectively: H.R. 37; bills identical to it (H.R. 3310, H.R. 3696, and H.R. 3795); and bills which differ from it only in certain minor technical aspects (H.R. 470, H.R. 471, H.R. 1511, H.R. 2669, and H.R. 2735). Like the administration's bill, H.R. 4758, these bills would expand the existing program for the conservation and protection of fish and wildlife resources by providing earlier identification of endangered species, authorizing necessary protective measures, prohibiting the taking of endangered species, and expanding the prohibition against trafficking in such species. Under the bills, the development and administration of the new program would be the joint responsibility of the Department of the Interior and the Department of Commerce, pursuant to the allocation of responsibilities established by Reorganization Plan No. 4 of 1970.

While we agree with the general purposes of H.R. 37 and the other bills identical or similar to it, we do not support enactment of these bills in their present form. The reason is that we consider H.R. 4758 to be significantly superior in a number of ways. I will now address some of the differences which lead us to that conclusion.

These bills establish a separate definition of "fish." Having separate definitions of "fish" and "wildlife" raises ambiguities as to what animals are included under each term. We believe the term used in H.R. 4758, "fish and/or wildlife" defined to mean "any wild animal, whether or not raised in captivity, including without limitation, any mammal, fish, bird, amphibian, reptile, mollusk, or crustacean, including any part, product, egg, or offspring thereof, or the dead body or parts thereof," is more appropriate than the use of separate terms.

While we have no substantive problem with the definition of the term "take," we feel it would be desirable to include pursue, shoot, wound, trap, and collect.

We foresee a potential legal problem relating to the phrase "not less than annually" where this language would appear to require the Secretary to establish a new list or reestablish the existing list, assuming that no changes were appropriate at that time, at least once every year. It is not inconceivable then, that if, through some circumstance, the Secretary failed to republish a list for which no changes were appropriate, a defendant in a civil or criminal proceeding under

this act, would claim the defense that the list had legally lapsed. This problem would be avoided under H.R. 4758 which stipulates that the Secretary publish a list and allows him to revise such list "from time to time."

These bills require the Secretary of the Interior to investigate the functions and responsibilities of the States in the management and protection of endangered species. The failure to also specify the Secretary of Commerce was an apparent oversight.

While we concur with the prohibition of acts applying to species or subspecies presently threatened, and those applying to species or subspecies likely within the foreseeable future to become threatened, we believe that certain additional acts should be specifically prohibited. Accordingly, we favor the more comprehensive language in H.R. 4758. We agree with the intent of the provision authorizing the regulation of "look-alike" species, but feel that the legislative history should make it clear that the Secretary will have the flexibility to take a variety of actions in regard to these species, as the situation demands. For instance, it might be that the Secretary would allow the importer of a similar-appearing species to show, by documentary evidence, that this shipment was indeed not the species shown on the endangered species list.

We would mention that under these bills, the Secretary is directed to convene, through the Secretary of State, an international convention on the conservation of endangered species. Since such a meeting, recently held in Washington, D.C., resulted in agreement on such a treaty, we recommend the striking of this provision.

We believe that the provision directing the Smithsonian Institution to conduct research and to report on endangered flora is neither necessary nor desirable. The Smithsonian already has authority to conduct this kind of a review. Flora are certainly a very critical part of our total ecosystem and in light of our particular interest in the importance of aquatic plants to marine animals, that is in fish habitat, we would be most anxious to assist the Smithsonian Institution in any way possible.

I will now turn to two other bills, H.R. 1461 and H.R. 4755, which are different from the bills which I have just discussed. These bills are identical to the endangered species bill developed and introduced at the request of the administration in the 92d Congress as H.R. 13081.

While H.R. 1461 and H.R. 4755 are, therefore, quite similar to this year's administration bill, H.R. 4758, we believe that the refinements we have made in H.R. 4758 make it even better than last year's bill. Consequently, we recommend against enactment of either H.R. 1461 or H.R. 4755.

The last bill pertaining to endangered species that I will discuss today is H.R. 2169. This bill would implement the Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere to expand the protection of endangered species. It would prohibit any person within any place subject to the jurisdiction of the United States from hunting, capturing, killing, taking, transporting, selling, or purchasing any fish or wildlife listed in the annex to the convention. H.R. 2169 also provides that in submitting the list of species for the annex, the Secretary of the Interior shall include the species found by him to

be rare or endangered under the terms of the 1966 Endangered Species Act. We note that the bill does not recognize the fact that the Secretary of Commerce, through NOAA, is now responsible for Federal programs concerning certain living aquatic resources. In addition, the recently agreed upon international endangered species treaty of worldwide applicability may effectively supplant the Western Hemisphere Treaty insofar as it deals with controls over trade. We, therefore, do not consider that enactment of H.R. 2169 would provide the necessary tools for full protection of endangered species.

In concluding my testimony, I would like to briefly summarize the recently negotiated Conference on International Trade in Endangered Species of Wild Fauna and Flora and mention the relationship between this convention and these bills.

This treaty, which was concluded on March 3, 1973, controls trade in both wild animals and plants. For treaty purposes, trade includes the introduction of a specimen from the high seas. The protected animals and plants are listed in three appendixes to the treaty: Appendix I includes species threatened with extinction which are or may be affected by trade; appendix II includes species which might become endangered if trade is not controlled; and appendix III includes a series of national lists of species which the listing nation feels should be subject to international trade controls in order to effectuate its conservation programs.

The treaty controls trade in the listed species by requiring the grant of export permits before a specimen can be either exported or imported. For appendix I species there must also be the grant of an import permit (which may not be granted primarily for commercial purposes) before the transaction can take place. Similarly, a permit must be granted prior to any introduction of an appendix I or II species from the sea. The grant of export permits is intended to be very restricted in the case of appendix I. In the case of appendix II specimens, permits may be granted for any purpose, but must be limited to appropriated levels. Export permits for appendix III specimens are granted by each State which has listed that specimen.

The convention establishes a secretariat to gather data on the trade-control system, conduct studies, and perform other functions. In addition, there are biannual meetings of the parties to, among other things, oversee the functioning of the system, consider and adopt amendments, and review the status of the listed species.

We are presently working with the Departments of Interior, State, and Agriculture and the Smithsonian Institution to identify those areas where modifications will have to be made in the administration's bill in order to fully implement the treaty at such time as it is ratified. We have not yet had an opportunity to develop appropriate language, but it does not appear that it will be too difficult to conform our bill to the treaty. However, the point involving the protection of endangered flora will need careful consideration.

Thank you, Mr. Chairman. I will be happy to answer any question the committee might have.

Mr. DINGELL. Mr. Pollock, you have given the usual, very helpful statement to the committee. Thank you.

Mr. de la Garza?

Mr. DE LA GARZA. Thank you, Mr. Chairman.

I do not know if Mr. Reed testified what countries participated in this treaty or this convention.

Mr. DINGELL. The Chair does think it would probably be useful to have that information. There are a large number of countries that did participate and there are 25 in number that have joined and I think we will have that put in the record at this point.

[The countries referred to follow:]

COUNTRIES PARTICIPATING IN THE DEVELOPMENT OF THE CONVENTION ON INTERNATIONAL TRADE IN ENDANGERED SPECIES OF WILD FAUNA AND FLORA

The 80 countries participating in the Conference were.—Afghanistan, Algeria, Argentina, Australia, Austria, Bangladesh, Belgium, Bolivia, Botswana, Brazil, Burundi, Cameroon, Canada, Central African Republic, Colombia, Costa Rica, Cyprus, Czechoslovakia, Denmark, Dominican Republic, Egypt, El Salvador, Finland, France, German Democratic Republic, Germany, Federal Republic of, Ghana, Greece, Guatemala, Guyana, Honduras, India, Indonesia, Iran, Israel, Italy, Japan, Jordan, Kenya, Khmer Republic, Korea, Republic of, Lebanon, Luxembourg, Malagasy Republic, Malawi, Mauritius, Mexico, Mongolia, Morocco, Netherlands, Niger, Nigeria, Pakistan, Paraguay, Panama, Peru, Philippines, Poland, Portugal, Rwanda, Senegal, Sierra Leone, South Africa, Spain, Sudan, Swaziland, Sweden, Switzerland, Tanzania, Thailand, Togo, Tunisia, Turkey, Union of Soviet Socialist Republics, United Kingdom, United States, Upper Volta, Venezuela, Vietnam, Republic of, and Zambia.

The 8 countries which sent observers to the Conference were.—Chad, Chile, Ecuador, Hungary, Ivory Coast, Jamaica, Kuwait and Norway.

The 9 countries which said they could not attend the Conference but requested to be informed of its results are.—Ethiopia, Ireland, San Marino, Saudi Arabia, Singapore, Trinidad, Tobago, United Arab Emirates and Western Samoa.

The 29 countries which have signed the Convention as of April 10, are.—Argentina, Belgium, Brazil, Costa Rica, Cyprus, Denmark, France, Germany, Federal Republic of, Guatemala, Iran, Israel, Italy, Luxembourg, Malagasy Republic, Mauritius, Morocco, Niger, Panama, Philippines, South Africa, Sweden, Switzerland, Thailand, Togo, Tunisia, United Kingdom, United States, Venezuela, Vietnam, Republic of.

Mr. POLLOCK. Mr. Chairman, if you like we could assist you further on that point. There were 80 nations that attended. There were 25 nations that have already signed, although the convention was just 3 weeks or so ago. There have yet been no ratifications.

We could certainly assist the committee, if you wish, in providing any further information you may need.

Mr. DINGELL. That would be helpful.

Mr. de la Garza?

Mr. DE LA GARZA. One second, Mr. Chairman.

Do we have any bilateral agreements similar to this convention individually with Mexico or Peru?

Mr. POLLOCK. I do not think we have any on endangered species, as such. We have a number of bilateral and multilateral agreements with other nations controlling a variety of fishing arrangements and certainly our Alaska fur seal agreement with the U.S.S.R. and Canada and Japan is an example.

We do have a number of them to control the taking of the animals or fish.

Mr. DE LA GARZA. Thank you, Mr. Chairman.

Mr. DINGELL. Mr. Goodling?

Mr. GOODLING. No questions.

Mr. DINGELL. Mr. Metcalfe?

Mr. METCALFE. No questions.

Mr. DINGELL. Mr. Forsythe?

Mr. FORSYTHE. Thank you, Mr. Chairman.

Just one question, Mr. Pollock. I welcome you back to the committee and I come back to you with this information problem regarding the importers of shellfish and fishery products. Let me go to section 6(e) of H.R. 4758, commercial importers of shellfish and fisheries and two other instances are specifically exempted from providing information that might be requested by the Secretary for enforcement purposes.

What is the rationale behind this?

Mr. POLLOCK. Under the definition of import in H.R. 4758, essentially all marine fish and shellfish would be landed as imports.

We believe it onerous to require all U.S. commercial fishermen to enter their catch only at designated ports. This would, among other things, result in loss of fishing time, increase operating costs and restrict offshore operations for fishing due to refrigeration and so forth.

Mr. FORSYTHE. Well, should we seek to further refine that so you do have the authority with imports other than the commercial fishermen who just because they are outside of the 3 miles are, in fact, importing?

Mr. POLLOCK. I think the problem historically is that the fishermen come from many areas and go into many ports and it would be most difficult on them to require them to travel undue distances to come into certain ports to unload their fish.

Mr. FORSYTHE. You feel comfortable there is no problem raised?

Mr. POLLOCK. Yes, sir, we think it is a management problem and we think we are capable of handling that.

Mr. FORSYTHE. Thank you.

Mr. DINGELL. Mr. Breaux?

Mr. BREAU. No questions.

Mr. DINGELL. Mr. Studds?

Mr. STUDDS. No questions.

Mr. DINGELL. The Chair recognizes Mr. Donald Young. He is not a member of the subcommittee, but in view of the fact both of you gentlemen are from Alaska and even though he has not been assigned to this subcommittee, I think you could greet each other formally.

Mr. POLLOCK. I could not be more delighted than to see Mr. Don Young, the new Congressman for the State of Alaska, on a major committee and I am sure he will be attending a lot of the subcommittee hearings.

Mr. DON YOUNG. Would there be any conflict with States that had already set up an endangered species classification with this law?

Mr. POLLOCK. We do not contemplate there would be any problem.

We intend to work very, very closely with the appropriate State agencies and I cannot conceive of a situation where we or the Department of Interior would assume some species was not endangered if a State thought it was.

It is a possibility it could work the other way. We may think there is a problem with a particular species and the State would not think so. I think the answer is we would work very closely with them, consult with them and, with all the knowledge, make an appropriate decision.

Mr. DON YOUNG. It would not preempt the State law?

Mr. POLLOCK. As I recall the provisions of the act, it would allow the State to have more restrictive provisions but not more liberal ones.

My counsel points out to me a very cogent point, that the State would not be in a position to control interstate commerce which is a function and responsibility for the Federal Government.

Mr. DON YOUNG. I will get back to it later.

Mr. DINGELL. Mr. Potter?

Mr. POTTER. Mr. Pollock, I am not entirely clear on the impact of the legislative reorganization act as it would affect your responsibilities as opposed to Interior's, with respect to things like anadromous fish.

Mr. POLLOCK. This is one of the areas that is foggy in the provisions of the act. We both have some responsibilities or assume some responsibilities for anadromous fish.

We work together jointly on some programs in a number of areas and if it became a problem involving any species of anadromous fish becoming endangered we would probably jointly add it to the list.

Mr. POTTER. But essentially you would still manage them in the open seas whereas Interior would be responsible for their fresh water activity.

Mr. POLLOCK. Yes; we would continue to manage them in the open seas. However there are some places where the conflict really becomes fuzzy as to actual jurisdiction. For example, both Departments have hatcheries for anadromous species which are located in fresh water. We are working together in the management of these fish.

Mr. POTTER. I am almost sorry I asked the question.

Mr. POLLOCK. I concur with your statement.

Mr. POTTER. Could you supply for the record your estimate of your 5-year program cost if the bill is enacted. I do not know whether it would affect you, but if you did amend the bill further to provide for flora you might consider how that, if at all, might affect your program cost.

Mr. POLLOCK. We will be involved to some extent in the flora aspect and to the extent capable, we will provide you the information.

[The information follows:]

The information requested was forwarded to the Office of Management and Budget but was not cleared for release to the Committee in time to be printed.

Mr. POTTER. Let me ask you a little bit on the flora issue. It is going to come up again and again in these hearings.

Do you have any anticipation when we can expect to hear from the agencies about implementing the convention language to include the protection of flora as well as fauna?

Mr. POLLOCK. I think Secretary Reed indicated before that we are working very closely together now trying to put it forward, and I

think the date that I understood him to indicate is probably in the next couple of weeks.

Mr. POTTER. That date I think was the date he expected to have the treaty come forward for affirmation. I am trying to get a deadline.

Mr. POLLOCK. Mr. Potter, I do not know that we can give you a specific time. We will work as fast as we can. I am advised by my associates now that it will take considerably longer than 2 weeks.

Mr. POTTER. That is all I have.

Mr. DINGELL. I am troubled on this. I assume that the question of legislation to implement the treaty will require meetings involving at least three agencies and probably four.

I can see your agency involved, obviously Interior has to be involved. I suspect in view of the questions now involving flora that Agriculture has to be involved and, of course, the State Department.

Mr. POLLOCK. That is correct.

Mr. DINGELL. Am I correct in assuming meetings moving toward implementing legislation are now going forward?

Mr. POLLOCK. Yes, sir.

Mr. DINGELL. We received from Mr. Reed an indication it was his feeling it was not necessary for this committee to wait until specific recommendations with regard to implementing legislation were before us.

It is, however, the consideration of the Chair that we should if you folks in the executive agencies are moving forward with reasonable speed try and consider not only in this legislation the subject legislation we have before us, but also have an opportunity to consider implementing legislation with regard to the convention just agreed upon.

You want to express any judgments on that?

Mr. POLLOCK. Mr. Chairman, I think we will have to play it by ear to an extent. Certainly the discretion of the committee will be all important if it looks like there is any delay in our putting together and getting a signoff in the administration on any implementing legislation. It is certainly not impossible for one bill to be passed and then amended in the same Congress. That certainly would be desirable to avoid if we could.

We will do our best to get the material to you as quickly as possible.

Mr. DINGELL. Would you do this for us and the Chair is going to request, and I think we made a similar request of Mr. Reed, but if we did not we will have counsel relay the request to Mr. Reed, would you inform us of any inconsistencies you see between the legislation before us, H.R. 37, or similar bills or the administration's bill, H.R. 4758, and the treaty that has just been concluded?

We do not want to pass any legislation which would be unconstitutional by reason of being inconsistent with the provisions of the treaty.

Mr. POLLOCK. We will certainly take a good look at it and come back to the committee with a response.

[The information follows:]

POSSIBLE INCONSISTENCIES BETWEEN THE ENDANGERED SPECIES BILLS AND THE ENDANGERED SPECIES CONVENTION

We do not see any inconsistencies or conflicts between these bills and the Convention which would raise constitutional problems, however, there are a number

of changes that will have to be made in H.R. 4758 in order to make it a truly implementing statute. As indicated at the hearings, we are working very closely with the Department of Interior, as well as other affected agencies in developing the necessary modifications of H.R. 4758. Suggested modifications were informally suggested by representatives of this Department for consideration by representatives of the Departments of Interior and Agriculture, and the Smithsonian Institution at a recent meeting to discuss implementing legislation. It is planned that the Department of State and the Bureau of Customs, who are involved in this process, will be represented at our next meeting.

The Administration's proposed changes will be transmitted to the Committee as soon as they have been developed.

Mr. DINGELL. We thank you for your presence and helpful testimony. It is a pleasure to welcome an old friend back to the committee. We miss you around here and hope things go well with you.

Mr. POLLOCK. Thank you, sir.

Mr. DINGELL. Our next witness is Mr. Raymond M. Housley, Associate Deputy Director, National Forest System.

The Chair notes you have associates with you, and if you will identify yourself and your associates, we will be most pleased to receive your statement.

STATEMENT OF RAYMOND M. HOUSLEY, ASSOCIATE DEPUTY CHIEF FOR NATIONAL FOREST SYSTEM, DEPARTMENT OF AGRICULTURE, ACCOMPANIED BY EVERETT DOMAN, DIRECTOR OF THE DIVISION OF WILDLIFE MANAGEMENT, FOREST SERVICE; AND MARVIN VANDER KOLK, DIVISION OF LEGISLATIVE AFFAIRS

Mr. HOUSLEY. Thank you, Mr. Chairman and members of the committee.

My name is Raymond Housley, Associate Deputy Chief of the Forest Service. With me is Everett Doman, Director of the Division of Wildlife Management of the Forest Service; and also with me is Marvin Vander Kolk, Division of Legislative Affairs in the Forest Service.

Mr. DINGELL. Gentlemen, the Chair is happy to welcome you. You may proceed.

Mr. HOUSLEY. My statement is a brief one, and if I may, I will read it in its entirety.

Thank you for this opportunity to present the views of the Department of Agriculture on H.R. 37, H.R. 2735, and H.R. 4755, and on the administration's proposed Endangered Species Conservation Act of 1973 which has been introduced in the House of Representatives as H.R. 4758.

There are many reasons why some species of wildlife are threatened with extinction. Perhaps the most insidious and damaging trend of the past decade has been the loss of wildlife habitat to the relentless sprawl of urban-industrial development.

Fundamental to the survival of any species, habitat describes the food and shelter requirements which enable species to reproduce and sustain viable populations; frequently these requirements are quite specific.

For many species of wildlife and fish, the last enclaves of suitable habitat are defined by the boundaries of State and Federal lands and sanctuaries established by perceptive individuals and organizations.

Previous legislation, including the act of October 15, 1966, which is the forerunner of the bills now under consideration, has done much to promote the acquisition, development, and improvement of habitat for wildlife and fish. Yet, it is dismaying to find that in spite of this and the fact that over one-third of the Nation's land area is publicly owned and ostensibly managed with the needs of wildlife in mind, the populations of many species of wildlife and fish continue to decline. It is clear that more needs to be done.

We believe the bills being considered today provide two essential features for strengthening present legislation.

First, they would broaden the definition of endangered species to include species or subspecies of fish and wildlife that may with the foreseeable future be threatened with extinction.

This is basically a prevention measure. From experience we know that prevention measures are the most efficient and effective approach for solving many land use problems, including forest fires and soil erosion.

We have already by administrative action, in cooperation with the Bureau of Sport Fisheries and Wildlife, extended the protection of the Endangered Species Conservation Act of 1969 to include species classified as rare and unique.

Secondly, the bills would strengthen present legislation by prohibiting the exporting, taking, possession, sale, and interstate transportation of endangered species.

The public's interest in the protection and management of all wildlife and fish is increasing dramatically. We believe there is strong public support today for enacting this prohibition.

The Department of Agriculture strongly supports the objectives of these bills to provide additional authorities for the protection of endangered fish and wildlife.

Our recommendation to the subcommittee is that H.R. 4758, the administration's proposed Endangered Species Conservation Act of 1973, be enacted in lieu of the other bills.

We believe that the penalties and enforcement provisions of H.R. 4758 are more comprehensive and stronger than the related provisions of the other bills.

For example, section 6(a) of H.R. 4758 authorizes suspension of Federal grazing permits upon conviction of a criminal violation of the act.

We also believe that it would not be appropriate for the Secretary of Agriculture to initiate a program of direct assistance to private landowners as provided by section 10(c) of H.R. 37 and H.R. 2735.

If a need to assist private landowners is identified, we believe such programs could be better accomplished by strengthening the role of the States in this area.

Because this Department recognizes the general responsibility of the States to manage resident wildlife, we wish to emphasize the importance of section 8 of H.R. 4758, which directs maximum cooperation with the States.

We are convinced that saving endangered fish and wildlife nationwide is a truly cooperative job, involving many Federal and State agencies; National, State, and local conservation groups; universities; and individuals.

The act of October 15, 1966, directs the Secretary of Agriculture to seek to protect endangered wildlife and fish and preserve their habitat on lands under his jurisdiction.

We have, in cooperation with the Bureau of Sport Fisheries and Wildlife, the States, and others, made considerable progress toward that end.

We have at the same time come to have a better idea of the magnitude of the job ahead.

As of early 1972, 320,000 acres of national forest system lands had been placed under special designation for the protection and enhancement of the habitat of rare and endangered species.

An additional 3,023,000 acres of habitat were being maintained or improved for rare and endangered species in conjunction and coordination with other resource management, such as timber management.

We look forward to more success in managing national forest habitats toward survival of the rare and endangered species which concern us all.

It is safe to say that no recent opportunity has so challenged Forest Service people in the field, where law is translated into tangible results, than has the challenge of assuring the survival of endangered wildlife and fish. Thank you.

Mr. DE LA GARZA (presiding). Mr. Breaux?

Mr. BREAU. No questions.

Mr. DE LA GARZA. Mr. Forsythe?

Mr. FORSYTHE. No questions.

Mr. DE LA GARZA. Counsel?

Mr. POTTER. Just a few. In July of 1972, Mr. Housley, Assistant Secretary Lyng of Agriculture wrote to Rogers Morton and said that, among other things, it is time we consider the desirability of including plants under the proposed endangered species legislation and the letter then went on and to set up contacts and procedures.

How far have you gotten?

Mr. HOUSLEY. The Department has not recommended at this time that provision be included in the administration's bill. There are a number of activities underway within the Department and between departments that would contribute to the accomplishment of such objectives, however.

Mr. POTTER. Can you give us any idea how soon we can expect to hear?

Mr. HOUSLEY. We can give you a summary of the activities that are presently underway. I guess I am not sure what your question is.

Mr. POTTER. That would be very helpful and if you would provide that summary, perhaps that can be included in the record at this point.

Mr. DE LA GARZA. Without objection, so ordered.

[The information to be supplied follows:]

SUMMARY OF ACTIVITIES

The fact sheet accompanying the President's Environmental Message earlier this year indicated the direction given Federal agencies to cooperate in a planned study of endangered plant species.

The Department of Agriculture has established a task force to coordinate its efforts in this field with those of other agencies. The Forest Service has initiated an inventory of the rarest plants in the country, and those in need of protection.

The Agricultural Research Service in cooperation with State Agricultural Experiment Stations is leading National Program for Conservation of Crop Germ Plasma aimed at maintaining the widest possible base of genetic diversity. A National Seed Storage Laboratory is in operation at Fort Collins, Colorado .

Over 100 Research Natural Areas have been established within the National Forests, and additional areas are under consideration. The purposes of Research Natural Areas include the protection of rare and endangered plant and animal species, and scientific research as to their interrelationships affecting their conservation and management.

Mr. POTTER. I do not perceive a sense of urgency within the agencies of the Government to produce the sort of work that is going to be necessary in order to allow us to conform our legislation to the convention and what I am really trying to do is convey to you a sense of the committee, which I believe is accurate, that this should proceed with more than deliberate speed and to ask that you convey this to the other departments with whom you are discussing this question of flora.

You say in your testimony you do not think it is appropriate to initiate a program of direct assistance to strengthen the program.

As you may know the language in H.R. 37 was, in fact, submitted by the Department of Agriculture to this committee last year which authorized that kind of program, as a drafting service and I do not mean to imply that you were thereby committed.

I would like a little more information from you. Why is it not appropriate? If, in fact, the management of land is as critical as it obviously is to the protection of endangered species, why not develop a Federal program of helping private land owners to contribute?

Mr. HOUSLEY. Well, it is our position that this role could be better filled by the States; the direct assistance program should be handled by and through the State agencies.

Mr. POTTER. I am sure it could, but they do not have much money for that. I suppose your answer is you do not either.

Is it your interpretation that it would be possible to use land and water funds for the protection of endangered species of flora as well as animals?

Mr. HOUSLEY. The Forest Service presently lacks that specific authority, and H.R. 4758 would not provide it insofar as protection of plants is concerned. There is ample authority for purchase of lands for national forest purposes under other acts.

[The information follows:]

ACQUISITION AUTHORITY OF LAND AND WATER

As you are probably aware, the Land and Water Conservation Fund Act does not provide acquisition authorities. It provides that Land and Water Conservation Fund monies can be used to pay for lands purchased for specific purposes under authorities provided by other acts. As the Act now applies to the National Forests, the monies can only be used to pay for lands acquired for predominantly recreation purposes. However, prior to the enactment of the Endangered Species Conservation Act of 1969, which further defined a "national area" as described in section 6(a)(1) of the Land and Water Conservation Fund Act, the Forest Service did acquire lands for endangered wildlife with Land and Water Conservation Fund Act monies.

Mr. POTTER. Would you also supply for the record of why you feel, in fact if you do, that it would not be appropriate to amend the language of H.R. 4758 or H.R. 37 whichever the committee moves out to include the words and flora after fish and wildlife throughout the act.

If that would not be appropriate we would like to know why it would not be.

Mr. HOUSLEY. We will be happy to give a full response to that.

[The response follows:]

ADDITION OF FLORA IN BILL

We do not believe it would be appropriate to put flora on the same basis as fish and wildlife throughout the Act. The problems associated with the excessive utilization and exploitation of fish and wildlife resources have been recognized to some degree since the colonial period of this Nation's history. Many laws have been enacted over the years to deal with the problems. Each was presumably based on re-evaluation of the existing laws and the needs of that particular time. The proposed legislation embodied in H.R. 4758 has a firm basis for what it would propose to do in regard to fish and wildlife. In contrast, national policies on endangered flora have not evolved to the same extent. The enactment of comprehensive legislation for the protection of flora without a better understanding of the problem and without consideration of the inherent differences between flora and fauna would not seem to be a solid approach.

Mr. POTTER. Your statement indicates that over a third of the Nation's lands are publicly owned. Would it not be appropriate therefore, to require in the context of this legislation that these lands should be managed among other things, to protect endangered species of fish and wildlife, and flora?

Mr. HOUSLEY. Yes, provided it were consistent with the primary purposes for which these lands were originally set aside.

Mr. POTTER. That is all I have, Mr. Chairman.

Mr. DE LA GARZA. Anything further?

We thank you very much Mr. Housley and your associates for appearing.

Without objection, the committee will stand in recess until 2 p.m. this afternoon.

[Thereupon, at 11:55 a.m., the subcommittee recessed, to reconvene at 2 p.m. of the same day.]

AFTERNOON SESSION

Mr. DINGELL. The subcommittee will come to order.

This is a continuation of the hearings of the Subcommittee on Fisheries and Wildlife Conservation and the Environment concerning the endangered species of fish, wildlife, and plants.

Our first witness this afternoon is an old friend, Mr. Gene Gazlay of the Michigan Department of Natural Resources, speaking on behalf of the International Association of Game, Fish and Conservation Commission.

Mr. Gazlay, it is a pleasure to welcome you before our committee for your statement, and if you will identify yourself fully for the purpose of the record we will be most pleased to receive your testimony.

Mr. GAZLAY. Thank you, Mr. Chairman.

STATEMENT OF A. GENE GAZLAY, DIRECTOR, MICHIGAN DEPARTMENT OF NATURAL RESOURCES, AND CHAIRMAN, LEGISLATIVE COMMITTEE OF THE INTERNATIONAL ASSOCIATION OF GAME, FISH, AND CONSERVATION COMMISSIONERS

Mr. Chairman, I am A. Gene Gazlay, director of the Michigan Department of Natural Resources and chairman of the Legislative Committee of the International Association of Game, Fish and Conservation Commissioners. By professional training, I am a wildlife biologist. I appreciate this opportunity to testify on behalf of the International Association which numbers among its government members the wildlife agencies of all 50 States, five Canadian provinces, and the Commonwealth of Puerto Rico.

Last year I accompanied my predecessor in Michigan, the late Dr. Ralph MacMullan, when he testified in support of legislation which would give added protection to endangered fish and wildlife. The points made then are still valid, namely, there is little doubt that by far the gravest danger to fish and wildlife is from man's abuse of the environment. Loss of critical habitat areas through the encroachment of modern civilization continues to cause the decline of too many species. In the familiar pattern, man moves into an area, farms and mines the land, cuts back the forest, introduces domestic animals, sprays pesticides, and builds roads, factories, and houses. It is sad to realize that in the spring of 1973 neither Michigan nor any part of this planet will see a single descendant of the vast nesting of passenger pigeons in 1878 near Petoskey, Mich. There is no hope that a bird-watcher anywhere will list a Carolina parakeet and only through a minor miracle will anyone see an Eskimo curlew. The gray wolf has vanished from almost all of the contiguous States.

As a biologist, I know that the emergence, flourishing, decline and extinction of species is a process that has gone on for countless ages and the dying out of animal species was a part of nature long before the dawn of man. While primitive man, as a superior predator, no doubt posed a special problem for the survival of various species on which he fed, an effort should be made to check the exterminating potential of today's technological man.

Mr. Chairman, the International Association supports a stronger effort to improve programs for endangered species of fish and wildlife. However, we do not endorse the pending bills because they are not adequate to the task. In our view, the following points must be incorporated in endangered species legislation. First, it should affirm the well-known fact that while legal protection and law enforcement are needed, the maintenance of suitable habitat is vital to the restoration of threatened wildlife. All land-managing agencies should be required to avoid damaging critical habitat for endangered species and to take positive steps to improve such habitat. The main thing most endangered species need is room and the cover provided by uncleared land and fence rows. Consideration should be given to means of encouraging the private sector in connection with maintenance or improvement of habitat.

Second, the legislation should provide a mechanism for the most effective use of Federal and State resources to accomplish the intensive task of preserving endangered fish and wildlife. The program with respect to resident species must be a cooperative effort and should build on existing State programs. No effort must be wasted in jurisdictional infighting. State wildlife agencies possess expertise and staffs of qualified biologists and enforcement officers that should be utilized for maximum efficiency. In other words, we would support legislation which is not preemptive of State authority over resident species unless it is evident that a particular State is either unwilling or unable to mount programs for species presently threatened with extinction. Congress should establish specific criteria against which the Secretary could measure the adequacy of State programs and if States measure up against such criteria, we are unable to see the value of Federal preemption. With respect to resident species which are likely within the foreseeable future to become threatened with extinction, we would oppose preemption. The Bureau of Sport Fisheries and Wildlife is not now nor is it likely to become adequately staffed and funded to carry out required management and recovery programs. The Federal Government cannot successfully carry out wildlife conservation programs extending into every nook and cranny of the United States. Much more can be accomplished through cooperation. Moreover, we would urge that concurrence of affected States be obtained prior to the listing or delisting of species or subspecies as endangered. This would avoid the problem that has arisen in Louisiana where the American alligator, which in no sense of the word is endangered in that State, has been listed by the Department of the Interior as an endangered species.

Third, Congress should recognize the fiscal limitations confronting all State wildlife agencies whose programs traditionally have been supported by little or no general tax moneys but instead by sportsmen's license revenues and funds derived from the Federal excise taxes on the sale of arms, ammunition, and fishing gear. New funding initiatives are being taken by the States. In Washington, the legislature has approved a program to secure revenue for nongame wildlife, including endangered species, through the voluntary purchase of personalized auto license plates. In Ohio, the legislature has authorized the sale of a special \$5 wildlife stamp, the possession of which authorizes no activity otherwise regulated in the State, with proceeds to be used for work on nongame species. In Missouri, the citizens committee for conservation circulated an initiative petition to provide a soft drink tax of 1 cent per unit with estimated proceeds for wildlife conservation in the amount of approximately \$20 million per year. More signatures were obtained for the initiative petition than any other previous petition in Missouri but due to a legal challenge on technical points the petition failed to achieve a place on the statewide ballot in the November 1972 election. In sum, traditional funding of State wildlife agencies is not adequate for the immense job of managing and protecting endangered wildlife and undertaking research on the scale required. New revenue sources are coming into being but we would urge that this legislation provide Federal assistance to be matched by State general fund moneys in order to carry out recovery programs for endangered species. In order to encourage effective State

programs, Federal assistance should be available only to States whose programs measure up to the specific criteria mentioned earlier.

Mr. Chairman, the association is hopeful that this committee will report out a bill which strengthens the endangered species program. In our view, however, none of the pending bills meet the needs set out above which are essential if such a program is to succeed. We would be glad to assist the subcommittee in attempting to develop a mechanism for Federal-State partnership in the area of endangered species of fish and wildlife.

Thank you.

Mr. DINGELL. The committee thanks you for your very helpful and very complete statement.

The record should show that you are the director of the department of natural resources in the State of Michigan, and that you are very ably following in the footsteps of our deceased and beloved friend, Mr. MacMullan, a most outstanding leader in that area.

Mr. GAZLAY. Thank you.

Mr. DINGELL. It is a privilege for us to have you here before this committee.

Mr. GAZLAY. Thank you, sir.

Mr. DINGELL. Mr. de la Garza.

Mr. DE LA GARZA. Thank you, Mr. Chairman.

I have no questions.

Mr. DINGELL. Mr. Breaux.

Mr. BREAU. Thank you, Mr. Chairman.

Thank you, Mr. Gazlay, for your statement.

On page 4 of your statement, you point out, "We would support legislation which is not preemptive of State authority over resident species unless it is evident that a particular State is either unwilling or unable to mount programs for species presently threatened with extinction."

I would like your comments on the provision of the committee bill, page 12, which allows the authority of the Federal Government to be suspended in this area if they see that the State is running a good program. This type of action would allow the State to actually manage the program.

Mr. GAZLAY. Yes. I think this would be highly desirable from the point of view of the States. The bill should include criteria, rather than leave the criteria completely up to the discretion of the Secretary.

These criteria, then, would indicate that if a State had the capability to mount an effective program to preserve a species that is endangered, and if it is the finding of the Secretary that the State has the capability and is willing and able to do the job, then preemption should not occur.

The Secretary should be happy to allow the State to carry on the program.

Mr. BREAU. But despite this language, you feel this is still not enough to some day allow the State to run the program completely?

Mr. GAZLAY. There are two schools of thought among the States. This is somewhat controversial.

Some States frankly feel that no preemption should occur.

I think the majority opinion, however, is that to have a viable program and really do something meaningful, obviously if a State is

unwilling or unable to do an essential part of the program, then preemption has to occur.

I think most of us recognize that.

Mr. BREAUX. The only other question I have is again on page 4, and you point out, "We would urge that concurrence of affected States be obtained prior to the listing or delisting of species or subspecies as endangered."

Mr. GAZLAY. Yes. Many of the States, notably Louisiana and Florida, feel that if "concurrence" rather than the indefinite term "consultation" had been specified, perhaps the embarrassment with respect to the American alligator in Louisiana could have been avoided.

Perhaps if "consultation" is adhered to and made meaningful, it will serve our needs, but the prevalent feeling among the great majority of States is that delisting or listing of species or subspecies should be with the concurrence of the affected State or States.

Mr. BREAUX. How do we solve the problem in which some States might arbitrarily refuse to concur or cooperate when a particular species is put forth as an endangered species?

Mr. GAZLAY. Well, really, I think the same rationale occurs there as with respect to the listing—with respect to the first category of listing. If a species is truly endangered and the State is unwilling or unable to take the necessary action to counter this threat, then I see no other course but to provide for preemption.

Mr. BREAUX. Thank you very much.

Mr. DINGELL. Thank you, Mr. Breaux.

Mr. Eckhardt.

Mr. ECKHARDT. Thank you, Mr. Chairman.

I have no questions.

Mr. DINGELL. Mr. Potter.

Mr. POTTER. In your statement, Mr. Gazlay, on page 3, you say, "Consideration should be given to means of encouraging the private sector in connection with maintenance or improvement of habitat."

That is an interesting idea. You may have heard the exchange with the Department of Agriculture, who did not like that idea at all.

Do you have any ideas about how this could be done?

Mr. GAZLAY. Yes. Various member States have some ideas. I do not have them at my fingertips here. We would be happy to submit them within a few days for the record.

Mr. DINGELL. I think that would be immensely helpful, and your kindness in providing that assistance will be much appreciated.

Mr. GAZLAY. Thank you very much, sir.

Mr. POTTER. You go further to state on page 3, "The legislation should provide a mechanism for the most effective use of Federal and State resources to accomplish the intensive task of preserving endangered fish and wildlife. The program, with respect to resident species, must be a cooperative effort and should build on existing State programs."

What sort of funding levels do you think are realistic and workable in the context of this program?

Mr. GAZLAY. Well, I am not sure I know precisely what would be realistic in terms of availability of money, but certainly from the standpoint of the capability of the States to match a Federal grant program, it is the general impression among the States that an authorization of

\$10 million certainly would be in order and could easily be matched by programs that are presently either on the drawing boards or about to be started.

Mr. POTTER. Let me ask you one question about flora.

Do you think, on the basis of your experience, that it would be desirable to amend this legislation to provide for protection of endangered species in flora?

Mr. GAZLAY. Yes. However, I would qualify this by saying that this subject has not been discussed among the State conservation agencies, but knowing their general attitude on related matters, I feel confident that they would welcome the amendment of this legislation to include programs for threatened flora.

As to how this should be handled, I am not certain. However, I feel confident that in most States the conservation or natural resource agency would be in the best position to administer a threatened flora program at the State level.

Mr. POTTER. I am not sure whether there has been testimony on the subject of habitat protection as an essential element of protection for endangered species, but would it be fair to say—I am about to put words in your mouth, and I apologize for it—would it be fair to say that habitat protection is an important element, and the protection of flora is essential for habitat protection?

Mr. GAZLAY. Yes, Mr. Potter, I feel sure that habitat protection almost invariably would be the crucial element of protecting endangered flora.

We have a new program in the State of Michigan which confirms this idea. It is identified as the wilderness preservation program. The basic effort will be to seek out and preserve rare and endangered habitat niches as opposed to rare and endangered species of plants. In the process, I think, we will truly be protecting the plant species, and some animals as well.

Mr. POTTER. That is all I have.

Mr. DINGELL. Mr. Eckhardt.

Mr. ECKHARDT. I just wanted to clear up this question as to how you used the term "preemption."

In reading the section of H.R. 37 on page 10, section 6, there is a provision for cooperation with the State, and it provides that the Federal agency may, in effect, assign enforcement of the act to the State, but as far as preemption is concerned, I would think that section (e) on page 11, would relate to that. It says:

Nothing in this act, or any amendment made by this act, shall be construed as superseding or limiting the power of any State to enact legislation on more restrictive than the provisions of this act for the protection and conservation of fish and wildlife, including the regulation or prohibition of the retail sale of specimens or of products processed or manufactured from the specimens of fish and wildlife, whether such specimens are alive or dead.

I have always understood preemption to refer not to an entering into the field by the Federal Government, but to an entering into an occupation thereof to the exclusion of the other body.

Mr. GAZLAY. Yes, I understand, but let us take a specific example. At the moment, the American alligator and the Eastern timber wolf are on the U.S. list of native endangered species. Yet in Louisiana several years of State protection have increased the number of alli-

gators to the point that a limited harvest is ecologically needed. Similarly, Minnesota's population of timber wolves can support limited hunting. If Federal legislation were passed which provided that the present Federal listing prohibited the taking of any alligators in Louisiana or timber wolves in Minnesota, it would be a clear case of improper preemption, in my opinion. Certainly the State should continue to have the right to be more restrictive than Federal laws or regulations, but certainly blanketing Federal decreases that disregard local situations should not be permitted.

Mr. ECKHARDT. Well, I suppose what you are calling for is not that the Federal Government preempt, but that the Federal Government approve with respect to the attention of these topics in the beginning.

Mr. GAZLAY. Yes, sir.

Mr. ECKHARDT. But I suppose you would recognize in some areas the Federal Government should probably put in effect minimum standards applicable everywhere to be enlarged by the States.

Mr. GAZLAY. I think the States will be able to live comfortably if the legislation has criteria which clearly spell out under what circumstances the Department of the Interior will preempt the State and not leave that completely up to the discretion of the Secretary.

I should, perhaps—

Mr. ECKHARDT. In other words, you were using the term "preempt" as making a final and positive ruling with respect to regulations which will be nationwide.

Mr. GAZLAY. Right.

Mr. ECKHARDT. But not in the sense of so occupying the field so that the State may not further act in the total area.

Mr. GAZLAY. True.

Mr. ECKHARDT. Thank you.

Mr. GAZLAY. I should also mention that this is a sensitive matter with the States because they view resident wildlife as being within their purview to manage, as opposed to migratory wildlife, which are clearly national and international in scope, and most species of endangered fish and wildlife come under this category of resident wildlife, so many of the States, whether right or wrong, would view the Federal identification and control and regulation as being preemptive of what historically and traditionally has been their sphere of influence.

Mr. ECKHARDT. Thank you, Mr. Chairman.

Mr. DINGELL. Mr. Gazlay, you have suggested that you have certain amendments in mind to the bill and the committee would appreciate if you would, at your earliest convenience, submit these amendments to the committee so we can consider them in terms, and I assume you will, at your earliest convenience.

Mr. GAZLAY. Yes, sir; Mr. Dingell.

Our Washington representative, Mr. Paul Lenzini, is ready to do that if you wish.

Mr. DINGELL. Well, I know Mr. Lenzini well, and he is a fine person.

Mr. Rountree.

Mr. ROUNTREE. One quick question, in following up on the chairman's request.

Perhaps it would be helpful for you to submit those particular categories and criteria that you are really talking about.

In other words, you must have some philosophy in mind of a list of 8 or 10 areas that the Secretary would consider in evaluating the merits of a State program.

That is all, Mr. Chairman.

Mr. GAZLAY. Very good.

Mr. DINGELL. I think that would be very helpful for us to have that.

I am curious. The H.R. 37 says there would be consultation with the State agencies.

The language of the administration bill is a little different. Some have suggested that there should be a veto on the part of the State.

As an alternative and a compromise measure, that an open consultation between two parties is about as much as we would be able to accommodate.

Could you make your personal views on this, Mr. Gazlay?

Mr. GAZLAY. Yes, sir.

I would first have to preface my personal views with the observations that most States would probably prefer a concurrence, as we have stated in our testimony, for obvious reasons. However, my personal view is, and also representing the State of Michigan, that we would be happy with consultation, feeling that it is a little bit cumbersome to expect concurrence to occur, particularly if the State is inclined to be derelict or delinquent in mounting an effective program.

However, I hope it would be clearly stated in the legislative history that it is the intent of Congress that true consultation occurs.

We hear many reports on other programs where consultation does not, in fact, occur in a meaningful manner and if consultation could be assured in a meaningful manner, I think the fears of many of the States would disappear.

Mr. DINGELL. Well, the bills with regard to acquisition of land for purposes of conservation, protecting endangered species read as follows:

In H.R. 37, it says, "Shall provide protection," and in H.R. 4758, it says, "May include consultation."

My personal feeling is that we should require consultation, but in the conduct of any program related to an endangered species it ought to be mandatory.

Now, you heard Mr. Nat Reed, the Assistant Secretary of the Interior, a very fine man, give his interpretation of it this morning, where he indicated he expected fully to consult with the States on these matters and did not expect too much difficulty.

Would this kind of language with regard to a program of that sort ease the minds of the national association in any manner?

Mr. GAZLAY. Yes, I think the word "shall" sounds like a pretty strong mandate to many States, and I think with that language, meaningful consultation will occur, and we share your confidence in people like Nat Reed, and as long as these people are in key administrative positions, I am sure the spirit of the law will be carried out.

Mr. DINGELL. Mr. Gazlay, the committee does thank you for your testimony, and we appreciate your being with us.

Mr. GAZLAY. Thank you, very much, sir.

Mr. DINGELL. Our next witness is Miss Cynthia E. Wilson, the Washington representative of the National Audubon Society.

Miss Wilson, we are pleased to welcome you to the committee. If you will identify yourself fully for the purpose of the record, we will be happy to receive your testimony.

Miss WILSON. I am Cynthia E. Wilson.

STATEMENT OF CYNTHIA E. WILSON, WASHINGTON REPRESENTATIVE, NATIONAL AUDUBON SOCIETY

Miss WILSON. Mr. Chairman and members of the committee. Thank you for the invitation to comment on this important legislation. As this committee knows, preservation of endangered species has long been one of the principal goals of the National Audubon Society, and we are pleased that you are moving ahead with legislation to perfect our existing endangered species law.

Both the administration's bill, H.R. 4758, and the chairman's bill, H.R. 37, contain needed improvements to the present law, such as extending protection to species "likely within the foreseeable future to become threatened with extinction." We are hopeful that this important provision will bring a number of species not presently protected under the program's purview so that they can be appropriately protected and prevented from slipping into the category of being "presently threatened with extinction."

Another desirable provision in both bills, although it is handled somewhat differently in each, is the extension of Federal protection to native species, with a provision that such authority can be delegated back to the States. Although we realize that a number of States may be unhappy about this, we feel that this is an appropriate reflection of the nationwide interest in endangered species. No matter where a particular endangered species resides, its fate is of concern to citizens all around the country.

Some States have very fine endangered species programs, and we would certainly hope that they would continue to carry out these programs.

There is one part of the administration's bill which concerns us greatly, and that is section 4(e). It would appear to us that this would void or hamper enforcement of New York State's Mason Act and other States' acts patterned after it. We understand that the Office of the New York State Attorney General will be submitting testimony on this point, and we would urge the committee to consider it carefully. For the record, I am attaching a copy of the New York, California, and Massachusetts laws.

Mr. DINGELL. Without objection, the documents referred to will be inserted at this point in the record. I think it is useful to have those as part of the record.

[The information is as follows:]

STATE OF NEW YORK—IN ASSEMBLY, FEBRUARY 3, 1970 (4270—A)

INTRODUCED BY MR. MASON—MULTI-SPONSORED BY—MESSRS. SOUTHALL, BURROWS, MARSHALL, REILLY, STAVISKY, PISANI, FLACK, GIORDANO, HAUSBECK, BROWN, STEINFELDT, BICCIO, KREMER, CALABRETTA, LILL, CRAWFORD, PASSANNANTE, STRAUB, MERCORELLA, LERNER, LONG, CARROLL, GUNNING, LEICHTER, GILMAN, RYAN, H. A. POSNER, BLUMENTHAL, GOTTLIEB, GALLIVAN, MONTANO, BETROS, SEARS, STEIN, BERLE, MICHAELS, HUNTINGTON, HECHT, MRS. C. E. COOK, STEVENSON, JERABEK, CHANA-NAU, HARWOOD, MILLER—read once and referred to the Committee on Agriculture—committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

Explanation—Matter in italics is new; matter brackets [] is old law to be omitted

AN ACT To amend the agriculture and markets law, in relation to prohibiting the sale of certain animal products

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. The agriculture and markets law is hereby amended by inserting therein a new section, to be section three hundred fifty-eight-a, to read as follows:

§ 358-a. *Sale of certain animal products prohibited. 1. No part of the skin or body, whether raw or manufactured, of the following species of wild animals may be sold or offered for sale by any individual, firm, corporation, association or partnership within the state of New York after a period of six months from the effective date of this section:—Leopard (Panthera pardus). Snow Leopard (Uncia uncia), Clouded Leopard, (Neofelis nebulosa), Tiger (Panthera tigris), Cheetah (Acinonyx jubatus), Alligator Caiman or Crocodile of the Order Crocodylia, Vicuna (Vicugna vicugna), Red Wolf (Canis niger), or Polar Bear (Thal-arctos maritimus), nor after a period of eighteen months from the effective date of this section, of the following species:—Mountain Lion, sometimes called Cougar (Felis Concolor), Jaguar (Panthera onca), Ocelot (Felis pardalis), or Margay (Felis wiedii); nor, from and after the effective date of this section, of any species or subspecies on any list promulgated by the United States Secretary of the Interior under the provisions of the federal Endangered Species Conservation Act of 1969.*

2. Any officer or agent authorized by the commissioner of the New York state conservation department, or any police officer of the state of New York, or any police officer of any municipality within the state of New York, shall have authority to execute any warrant to search for and seize any goods, merchandise or wildlife sold or offered for sale in violation of this section, or any property or item used in connection with a violation of this section; such goods, merchandise, wildlife or property shall be held pending proceedings in any court of proper jurisdiction. Upon conviction, such seized goods, merchandise or wildlife shall be forfeited and, upon forfeiture, either offered to a recognized institution for scientific or educational purposes, or destroyed.

SENATE BILL No. 1614

CHAPTER 1283

An act to amend Section 653o of, and to add Section 653r to, the Penal Code, relating to endangered species

[Approved by Governor October 29, 1971. Filed with Secretary of State, October 29, 1971.]

The people of the State of California do enact as follows:

SECTION 1. Section 653o of the Penal Code is amended to read:

653o. It is unlawful to import into this state for commercial purposes, to possess with intent to sell, or to sell within the state, the dead body, or any part or

product thereof, of any alligator, crocodile, polar bear, leopard, ocelot, tiger, cheetah, jaguar, sable, antelope, wolf (*Canis lupus*), zebra, whale, cobra, python, sea turtle, colobus monkey, kangaroo, vicuna, sea otter, free roaming feral horse, or Spanish lynx.

Violation of this section constitutes a misdemeanor.

SEC. 2. Section 653r is added to the Penal Code, to read :

653r. Notwithstanding the provisions of Section 3 of Chapter 1557 of the Statutes of 1970, it shall be unlawful to possess with intent to sell, or to sell, within this state, after June 1, 1972, the dead body, or any part or product thereof, of any fish, bird, amphibian, reptile, or mammal specified in Section 653o or 653p.

Violation of this section constitutes a misdemeanor.

THE COMMONWEALTH OF MASSACHUSETTS

ACTS, 1971.—CHAPS. 877, 878

Nothing contained in this section shall be construed so as to prohibit the sale or offering for sale of any species or subspecies of wildlife mentioned in this section to any recognized public institution for zoological, educational, or scientific purposes, or for the propagation of such wildlife in captivity for preservation of the species.

SECTION 2. So much of section twenty-six A of chapter one hundred and thirty-one of the General Laws, inserted by section one of this act, as relates to alligators, gavial, tomistoma caiman or crocodile of the order *Crocodylia* shall take effect on September the first, nineteen hundred and seventy-three, and the remaining provisions of said section twenty-six A shall take effect on September the first, nineteen hundred and seventy-two.

Approved October 31, 1971.

CHAP. 127. AN ACT PROTECTING THE GRAY WOLF, GIANT OTTER AND ALL SOUTH AMERICAN OTTERS OF THE GENUS *LUSTRA*

Be it enacted, etc., as follows:

SECTION 1. The first paragraph of section 26A of chapter 131 of the General Laws, as appearing in section 1 of chapter 876 of the acts of 1971, is hereby amended by striking out, in lines 9 and 10, the words "or margay (*Felis wiedii*)" and inserting in place thereof the words:—, margay (*Felis wiedii*), gray wolf (*Canis lupus*), giant otter (*Pteroneura brasiliensis*) and all other South American otters of the genus *Lutra*.

SECTION 2. This act shall take effect on September the first, nineteen hundred and seventy-three.

Approved March 28, 1972.

CHAP. 876. AN ACT PROVIDING FOR THE PROTECTION OF ENDANGERED SPECIES OF WILD ANIMALS

Be it enacted, etc., as follows:

SECTION 1. Chapter 131 of the General Laws is hereby amended by inserting after section 26 the following section:—

Section 26A. No person shall sell or offer for sale within the commonwealth any part of the skin or body, whether raw or processed, of the following species of wild animals or the animal itself: leopard (*Panthera pardus*), snow leopard (*Uncia uncia*), clouded leopard (*Neo felis nebulosa*), tiger (*Panthera tigris*), cheetah (*Acinoyx jubatus*), alligators, gavial, tomistoma caiman or crocodile of the order *Crocodylia*, vicuna (*Vicugna vicugna*), red wolf (*Canis niger*), polar bear (*Thalartos maritmus*), mountain lion, sometimes called cougar or puma, (*Felis concolor*), jaguar (*Panthera onca*), ocelot (*Felis pardalis*), or margay (*Felis wiedii*).

Such skins, animals or bodies unlawfully sold, offered for sale or held with intent to sell in violation of this section may be the subject of a search warrant as provided in chapter two hundred and seventy-six. Such search warrants may be issued to the director of law enforcement, his assistants, natural resource officers, members of the state police and members of the metropolitan district commission police in areas over which they have jurisdiction. Such skins,

animals or bodies described in such warrant may be seized and shall be forfeited to the commonwealth and upon such forfeiture may be disposed of by said director for the best interest of the commonwealth.

Miss WILSON. In H.R. 37, section 6(e) handles the question of stricter State laws satisfactorily, and we strongly prefer its language.

Another issue which is troublesome is the splitting of jurisdiction between the Secretaries of Commerce and Interior. Both bills do this, "pursuant to the provisions of Reorganization Plan No. 4 of 1970," which, as we understood it, left the endangered species program in Interior. Although the Marine Mammals Act very squarely placed management authority for some of those species with NOAA, we still believe that authority for determining whether a specie should be included on the endangered species list lies with Interior.

These seem to us to be the major issues, but there are a number of items in the bills which we would like to bring to the committee's attention. There are a number of fine distinctions between some of the definitions in the two bills; some of them seem to be merely semantic, others seem to be substantive. For example, "Take"—Both definitions include hunt, capture, and kill, but the administration's bill also includes pursue, shoot, wound, trap, and collect, while H.R. 37 includes threaten and harass. I hope that the lawyers can figure out which is best, because I am not at all sure. However, we think "harass" should definitely be included.

Person—the administration's bill does not include Government employees, while H.R. 37 does. H.R. does not include corporation, but that may be covered by the term "entity"—we are not sure.

Import—We think H.R. 37's inclusion of "entry into a foreign trade zone" is good, because we understand that in some instances such zones have been used in transshipping endangered species products.

We note that the administration's bill includes a definition of foreign commerce, but H.R. 37 does not. On the determination of endangered species in the administration's bill, section 2(c)(1), we believe the "drastic" before "modification" is too narrow and would prefer that it be deleted. Also, delete "to the extent practicable" in section 2(c)(1).

In section 2(b) of the administration's bill regarding responsibilities of other Federal agencies, the language "and, insofar as is practicable and consistent with the primary purposes of such bureaus, agencies and services, shall utilize their authorities" is rather narrow, and we prefer the language in section 2(c) of H.R. 37.

Section 3(d) of the administration's bill does not mention the "destruction or modification of critical habitat of such species" as does section 5(d) of H.R. 37. We think this is an important point and should be included.

And, of course, Mr. Gazlay spoke to that point, about habitats.

In the section concerning regulations for species "likely to become threatened," we urge that the Secretary be required to publish those regulations in the Federal Register and give the public opportunity to comment on them.

There are slight differences in the language regarding exceptions for educational, scientific, and zoological purposes, section 5(a) in H.R. 4758, section (a), in H.R. 37. We believe that it is the intent

of both bills to carefully limit such exceptions so (1) that they do not in themselves constitute a drain on populations of endangered species and (2) that the taking will benefit such species. We suggest that this intent could be more strongly expressed by making enhancement of the survival of such fish and wildlife the principal criterion for these exceptions, in addition to the requirement that the taking not adversely affect the survival of the species. This would not exclude considerations of exceptions for any of the three categories, but it would emphasize the primary purpose of this act.

We would also urge the committee to scrutinize the whole subject of economic hardship permits. While we are aware that there may be some genuine cases of economic hardship caused by the passage of this legislation, we are also painfully aware of at least one alleged violation which has been uncovered. We wonder whether there is some way to tighten up the criteria for these exemptions. We are not sure what the criteria have been in the past for such permits nor do we know how many of these permits have been issued. As this committee knows, implementation of the Marine Mammal Act is under way, including consideration of economic hardship permits. We have found it very helpful to have NOAA publish notice of applications for such permits in the Federal Register, upon which we have been able to comment. Some of the applications have, in our view, been unjustified, and at least one has been withdrawn presumably because of public outcry. We think it is in the public interest to get this information out on the table, and we hope the same thing can be done for endangered species permit applications.

It is our understanding that in the past there has been no requirement or other directive for Interior to publish such information; we believe it would be appropriate to include such a requirement in the pending legislation.

Penalties—Section 9(b) in H.R. 38; section 6(a)(3) in H.R. 4758. We note that the administration bill provides that the head of any Federal agency may modify, suspend, or revoke a Federal lease, license, permit, or other agreement with a person who is convicted of a criminal violation of this act, in addition to taking away any Federal hunting or fishing permits or stamps. We are all in favor of this, as we believe that people who violate Federal wildlife protection acts should not continue to reap the benefits of bargain grazing fees and other Federal assistance.

Mr. Chairman, these bills are complex and although we have studied them carefully, it is very possible that we have overlooked some subtle but important problem. Therefore, we may wish to make additional comments before the hearing record closes and we request the opportunity to do so.

Mr. DINGELL. I think that would be helpful to the committee, and the Chair does advise that the record will remain open, approximately 10 days or 2 weeks, at least, for the purpose of receiving additional comments from yourself and other private and public agencies.

Mr. de la Garza.

Mr. DE LA GARZA. Thank you, Mr. Chairman.

I have no questions.

Mr. DINGELL. Mr. Breaux.

Mr. BREAU. Thank you, Mr. Chairman.

Miss Wilson, I would like to ask you one question. On page 2 of your statement, you were talking about the overlapping of the authority of the Department of Commerce and the Department of the Interior.

You state, "Although the Marine Mammals Act very squarely placed management authority for some of those species with NOAA, we still believe that authority for determining whether a species should be included on the endangered species list lies with Interior."

I am trying to get the opinion of the Audubon Society for the requirement of some consultation with the States.

Miss WILSON. Well, I think the problem vis-a-vis the discussion that the chairman had with Mr. Gazlay a few minutes ago, I think the requirement that the Secretary shall consult with the States is a perfectly legitimate one and a good one. After all, I think consultation is very appropriate.

Now, in this case, no, I would obviously expect that the Interior Department would not go ahead and close its eyes, without even asking NOAA, but our concern is that there not be hassling back and forth between two Federal agencies over what is or is not on the list.

Mr. BREAU. The Audubon Society does support the concept of direct consultation between the States?

Miss WILSON. Oh, yes. I think we would support that surely.

Mr. BREAU. Thank you, Mr. Chairman.

Mr. DINGELL. Mr. Eckhardt.

Mr. ECKHARDT. Thank you, Mr. Chairman. I have no questions.

Mr. DINGELL. Mr. Potter.

Mr. POTTER. I have no questions.

Mr. DINGELL. Mr. Rountree.

Mr. ROUNTREE. In relation to the economic hardship provision, do you have something specific in mind from the standpoint of your past experience with the type of evidence or information considered in the economic hardship applications that you would want to strengthen, tighten, or curtail?

Miss WILSON. Well, no. The case I was referring to is one of an alleged violation, which is one I am sure you heard of, is that *Zeehandelaar* case with the case of Cheetahs which involved one of these types of permits.

With the marine mammal experience gradually evolving, we can see the usefulness of having some way of knowing just what volume of requests there are for these applications because now, and I am not blaming the Department of Interior for not publishing before, because nobody has ever said that they should, after all, but it is one of those things that it appears it has been such a good idea that the Marine Mammals Act for the public, for instance, if you go to a zoo or pick up the paper and see that such and such a zoo has just acquired—I am trying to think of an endangered species—say, a snow leopard, you might wonder, well, how did they happen to get—that is not an economic hardship—but you might wonder how did they happen to have a snow leopard.

I think the public has no idea as to whether there are a lot of these permits being granted or just a handful, and we just do not know. I do not think the Department of Interior has been trying to hide anything, but it is just something that nobody has ever bothered to

look into, but I think it would be a healthy thing for the public, to have a good idea of what type of demand there is for these permits.

Mr. ROUNTREE. I wonder if the National Audubon Society has given any thought to the problem or issue, which may or may not have occurred in the past, where perhaps there has been a ground swell of public opinion or from a very specialized segment of the environmental groups who feel that a species should definitely be placed on a particular list, either under the provisions of the old law or under the new concepts that we are talking about today, but yet, for some reason or another, the Secretary of the Department of Interior has not quite moved fast enough, or does not quite feel that we have enough evidence accumulated to justify a decision. It appears that there is nothing addressed in any of the bills we have under consideration today or in the procedures in the old law whereby you can have some mechanism to actually mandate or require decision on the part of Interior one way or another, as opposed to taking no action or inaction over a long period of time on this contested issue of whether a species should or should not be placed on the list.

Do you have any feelings in that regard, or any experiences?

Miss WILSON. No real direct experience. I may be wrong, but I think in one of the bills there is provision for a hearing on a legitimate request, but that may be a different section of the bill.

Do you know which one I mean? There is a provision in there for a public hearing upon request, but I am not sure if it goes to the listing or to another thing. I think it would certainly—

Mr. ROUNTREE. I think the public hearing provision is still in essence discretionary on the part of the Secretary of the Interior. There appears to be some conflict of opinion between some interested public groups versus the internal mechanisms within the Department of Interior itself. Is this an area that should be resolved or actually can be resolved?

Miss WILSON. If I may, I would like to think about that and talk to some other people on my staff because I have not really ever addressed that issue, but I would be glad to discuss it with some of our staff and see if they have any strong feelings on it one way or another.

I certainly think sometimes it does seem like decisions are held in abeyance, but often there is a very good reason, and it may be that there is not the information available, and in that case, we would hope that the information could be made available as quickly as possible, but we would not want to force the Secretary into making a bad decision by setting an arbitrary deadline.

Mr. ROUNTREE. Thank you, Mr. Chairman.

Mr. DINGELL. Mr. Potter.

Mr. POTTER. Just for the record, I might note that what you are looking for is H.R. 37, which said that once a person has presented substantial evidence to indicate that an animal should be placed on the endangered species list, the Secretary is required to conduct a hearing on the record. The administration bill says, "There will be a review."

Miss WILSON. Well, I prefer the H.R. 37 version, because I think that is a very good provision, and that is the one that I was trying to think of.

Mr. DINGELL. Miss Wilson, the committee is thankful for your helpful testimony. If you will make your additional information avail-

able within due time, we will be sure it is considered in the legislation. Thank you.

Miss WILSON. Thank you, Mr. Chairman.

Mr. DINGELL. Our next witness is Mrs. Christine Stevens, secretary of the Society for Animal Protective Legislation.

Mrs. Stevens, we are glad to have you back with us today, and it is always a pleasure to see you here.

Mrs. STEVENS. Thank you very much, Mr. Chairman.

We are deeply grateful to you for the advances that have already been made and very much hope that they will progress with the same vigor that they have so far.

Mr. DINGELL. Thank you very much.

STATEMENT OF CHRISTINE STEVENS, SECRETARY, SOCIETY FOR ANIMAL PROTECTIVE LEGISLATION, WASHINGTON, D.C.

Mrs. STEVENS. The United States has led the way for the entire world in legislative and administrative action to protect endangered species. Much of the credit belongs to the distinguished chairman of this subcommittee to whom the world owes a great and increasing debt.

The successful conclusion of the recent plenipotentiary conference, called in response to an important provision of the Endangered Species Act of 1969 and a resolution of the Stockholm conference, makes it essential that U.S. legislation be strengthened and broadened to support the terms of the convention now awaiting ratification by 10 countries before it goes into force. Rapid action on this matter is essential in order to cut down to the very greatest extent possible the time left for poachers and smugglers to continue their operations without the restraining force of the new international convention.

Head of the U.S. delegation to the conference, Hon. Russell E. Train, has pointed out that it would be pitiful if the lists of animals drawn up for international protection should be doubly threatened now by exploiters eager to make an extra killing in every sense of the word. The degree to which this additional threat materializes depends a great deal on the time allowed it to do so. We urge the speediest possible enactment of needed amendments to the Endangered Species Acts. As the United States has taken the lead, so we must continue to press forward, bringing to other nations the same realization of urgent necessity to stop the horrifying extinction of species which has come in the past 10 years—8 percent of all species known to have become extinct have gone forever in those few years, according to Secretary Morton. At this rate, every month, every week of delay must weigh on our consciences.

Administration of the new legislation, its vigorous and unhesitating enforcement to accomplish maximum protection for threatened species, is the most important consideration which the distinguished members of this subcommittee has before them.

The Department of the Interior which has the experience in enforcement of existing law for the protection of endangered species must, and I emphasize must, continue to administer the law as amended if we are to have the same high level of protection for all threatened species.

The proposal for divided jurisdiction bringing the Department of Commerce into administration of the law should be rejected.

It is the buying, selling, and trading in endangered species, especially the marine species, that has brought them to the sorry pass in which they now find themselves. Commerce, in short, has done them in. Why, then, in the name of all that is reasonable and logical, should the Department of Commerce be put in charge of these species?

I will not refer at length to the well-known exchange between Secretary of the Interior Hickel who put all the commercially exploited whales on the endangered species list and Secretary of Commerce Stans who sought by every means to prevent this necessary listing. Testimony published in the record of last year's hearings amply demonstrates the classic positions of the two Secretaries and the two Departments.

The Department of the Interior's continuing firm protective position with respect to the whales is desperately needed in the coming international battle to save the cetacea. It was with distress and shame that I listened to Mrs. Prudence Fox of the Department of Commerce's NOAA deny that the sperm whale is endangered. She made no bones about her views—indeed one might have supposed that she was expressing U.S. Government policy as she chatted with delegates during a coffee break at the recent plenipotentiary conference.

The sperm whale is on the endangered species list, thanks to Secretary Hickel and Secretary Morton. But even at the critical period of our Government's fight to have "introduction from the sea" included in the Endangered Species Convention, even when U.S. delegates from the Departments of Interior and State and from the Council on Environmental Quality were doing their utmost in diplomatic negotiation to insure that marine species would not be excluded, as the Japanese and other whale exploiters wished; even when every member of the U.S. delegation should have been pulling together as a team, Mrs. Fox was casually downgrading and undermining the position of her Government and the efforts of her delegation.

If this type of attitude toward whales exists in the Department of the Interior, I have yet to encounter it. I am confident that it would stand no chance to develop there—as it is evidently allowed to do in Commerce.

The great work of this subcommittee, where all endangered species legislation has been set in motion, deserves full recognition. It is fair to say that without this work the chances of saving the world's whales would now be infinitesimally small. But today there is a fighting chance to save them if the members act again with the wisdom they showed in 1966 and 1969, keeping jurisdiction in the hands of a single agency, the Department of the Interior.

The protection of endangered species requires dedication to the principle, devotion to the cause of keeping the species with which the natural world is still blessed alive and actively filling their ecological niches. As one of the delegates at the recent conference expressed it, the work must have the "souffle de vie"—the breath of life.

A genuine determination to succeed, a genuine respect for the myriad magnificent forms of life with which we are privileged to share the Earth are needed. That spirit exists in the Department of the Interior, just as it exists in this subcommittee. It would be tragic if secondary

considerations were to be allowed to influence the decision of this body, for the future of many marine species is at stake. The decisions taken this year on this bill will shape the very character of the earth and its inhabitants for generation after generation. The world can easily become the biologically impoverished planet which the terrible record of extinction in the last decade clearly forecasts. If commercial arguments are given primary consideration, this irreversible poverty is bound to ensue. Man cannot bring to life again any species which he has destroyed. Modern man has destroyed species at a constantly accelerating rate. It has been economic and commercial motivation which, broadly speaking, has brought about this terrible desecration. At last, the collective human conscience is beginning to be aroused, but this conscience is still quite frail. Its qualms are still quite easily assuaged with misguided reassurances by those whose training and outlook makes them want to believe commercial exploitation to be justified in cases where it is not. Thus, if we are serious in our stated intention to preserve species, it follows as an absolute necessity that legislation be administered by an agency whose orientation is not commercial.

Do we wish to instruct the Department of Commerce to drop its interest in the commercial? Certainly not. The absurdity of such a thought points up the even greater absurdity of giving it authority to list or delist species that have commercial importance.

In welcoming delegates to the Plenipotentiary Conference, Secretary of the Interior, Rogers Morton, said, "You are here today not merely as the representatives of individual nations, but, in a true sense, as the representatives of mankind in a meeting with his own conscience."

Mr. Chairman, the results of that Conference suggest that the conscience of some nations is considerably less finely honed than that of the United States, as expressed in our policy on the great whales. Had our national policy on these splendid animals been any less firm and forthright than it is we would not even have been able to achieve the bare minimum for marine species that we did. "Introduction from the Sea" was opposed vigorously and at length by Japan, the United Kingdom, and others. Only by bargaining from a position of strength were we able to insure that any whales, seals, and other ocean creatures have protection internationally now or in the future.

Had the Secretary of Commerce had his way when over his opposition the sperm, fin, and sei whales were added to the endangered species list by the Secretary of the Interior, not only would the United States have been guilty of pouring dollars into the pockets of the killers of these beleaguered species, but we would have lacked both the moral vantage point and the practical diplomatic bargaining position from which to take the first effective step toward saving threatened species in the sea.

To turn the tide of extinction, a substantial edifice of rational protection has to be built. Each building block must be solid and strong. If U.S. endangered species legislation is administered by an agency which might be persuaded by considerations of international commerce to back down and, for example, to delist the sperm whale, the edifice can easily crumble. The nascent world conscience so much in need of nourishment and example in order to grow strong itself, looks

to the United States. We dare not fail to give substance to our words and to our diplomacy.

Now, Mr. Chairman, that is the part of this legislation that I consider to be of the very greatest importance.

I have a number of suggestions that are listed here. I am not sure whether you would like to have me go over those, or whether you prefer just to have them in the record.

Mr. DINGELL. We intend to make a very careful study of all the suggestions made with regard to the amendment of this legislation, so we will certainly consider them, in any event, very carefully.

Mrs. STEVENS. Thank you, Mr. Chairman.

Then, I think I perhaps will not read these, since they are the sort of thing that you have to look at and compare the bills.

[The information is as follows:]

COMPARISON OF BILLS

To comment on some of the differences in the pending bills, the Society for Animal Protective Legislation strongly supports Section 6(e) of H.R. 37, H.R. 1511, H.R. 2735 and other bills with the identical provision permitting states to enact more restrictive state laws.

We are very much concerned that Section 4(e) of H.R. 4758 might invalidate legislation such as New York's Mason Act, because of the inclusion of the words "or prohibit" (line 5, page 10). We would support this and other provisions preventing states from weakening the federal statute, but believe they should have the right to enact and enforce stronger state laws. We suggest striking "or prohibit."

We also prefer the tighter language of H.R. 37 with regard to the exception, Section 8(a) for taking for "scientific purposes, and for the propagation of such fish and wildlife in captivity for preservation purposes." This is preferable to the language in Section 5(a) of H.R. 4758 which also includes "zoological" and "educational" purposes. The taking of endangered species must be firmly discouraged.

By the same token, use of the word "or" rather than "and" in Section 2(a) of H.R. 37 is superior phraseology. This is important in order to avoid mandatory propagation, which ought to be the last resort. Rare and endangered animals should be protected in their natural habitat to the greatest extent possible.

Three other desirable provisions in H.R. 37 which we hope will be retained in the final legislation are as follows:

(1) Section 7(c) permitting the Secretary to extend the Act's protection, when he deems it advisable, to species which so closely resemble endangered species that enforcement becomes difficult.

(2) Section 9(g)(2) requiring registration and record keeping by importers of fish and wildlife, and requiring them to afford the Secretary's representative access to their places of business.

(3) Section 9(c)(2) authorizing arrest when an enforcement agent has probable cause to believe that a person is knowingly violating the Act, and authorizing search and seizure of property taken, used or possessed in connection with such violation.

There are two places in which a combination of the phraseology of H.R. 37 and H.R. 4758 would be helpful.

(1) Under the definition of "take" in H.R. 4758, the words "wound, trap" and "pursue" are included. Under the corresponding definition in H.R. 37, the words "threaten, harass" appear. All of these words are helpful, and we would suggest that all of them, as well as those words which are common to both definitions be included in the final definition.

(2) Under the penalty provisions (Section 9(b) in H.R. 37 and Section 6(a) (3) in H.R. 4758) suspension or revocation of hunting or fishing licenses is included. We recommend that the word "shall" (line 10, page 14 of H.R. 4758) be used, and that the longer period of five years (line 22, page 17 of H.R. 37) be adopted. It should certainly be mandatory that the license used to violate

the Act be suspended. Further, it should be possible for the Secretary to revoke or withhold such a license for as long as five years.

The provision in H.R. 4758 (same section, lines 4-10, page 14) authorizing the Secretary to "immediately modify, suspend or revoke each lease, permit or other agreement" on the grazing of domestic livestock on Federal lands is an excellent one which we strongly recommend for inclusion.

Other desirable provisions in H.R. 4758 which we recommend for inclusion are:

(1) Section 2(c) page 3, lines 18 and 19, providing that species shall be regarded as endangered if threatened with extinction "throughout all or a significant portion of its range."

(2) Section 2(d) (6) page 5, lines 22 to 25, and page 6, lines 1 to 11, the definition of "import" seems to deal with any possible misunderstanding.

In H.R. 37, Section 10(c) page 24, line 15 and page 25, line 3, we urge that the word "control" be deleted. We favor the use of all helpful resources to protect endangered species, and 10(c) would bring in assistance available to the Secretary of Agriculture. However, the use of the word "control" with respect to endangered species might be misconstrued. Livestock owners have been "controlling" the red wolf to the brink of extinction. If the word "control" is omitted where it appears in this section, we believe a possible loophole would be eliminated. This provision does not appear in H.R. 4758.

In conclusion, I think you very much, Mr. Chairman, for the opportunity to testify on this most important legislation. We look to your leadership to bring about enactment of a bill our Country can be proud of.

Mrs. STEVENS. I would, however, mention in particular—Cynthia Wilson also mentioned the danger of possibly destroying the effect of the Mason Act, and that, of course, would be very important to avoid.

Mr. DINGELL. Mr. Potter inform me that we will have two witnesses here from New York, one of whom will appear next with regard to the subject of plants and matters of that sort and then the assistant attorney general of the State of New York, who will speak to the specific point you are raising and he will testify tomorrow.

Mrs. STEVENS. Well, they would obviously know a great deal more about that.

Also, another point which I think is very good in H.R. 4758 is one in which grazing permits could be rescinded, and I hope that can be made a part of this—

Mr. DINGELL. It will be so.

Mrs. STEVENS. Thank you very much, Mr. Chairman.

Mr. DINGELL. The committee thanks you for a very helpful statement.

Mr. Breaux.

Mr. BREAUX. Thank you, Mr. Chairman.

Thank you, Mrs. Stevens, for this statement. It is a very outstanding statement.

I get more and more concerned as I hear less and less testimony about States involvement in the regulation of one or either of these programs.

You pointed out in the next to the last paragraph that it is important for the Department of the Interior to administer the law because of the particular abilities that it has.

Now, there is a provision, of course, in the legislation that allows the Department to assign administration to the States when they find that the States have a sound management program.

Do you have any comments on the role of the States as you see it?

Mrs. STEVENS. Well, I think if the States do an equally good job I think it is perfectly appropriate, but I think it is most important if

they should, at some point, cease to be doing a good job, it can come right back again.

I do not think it is sensible to simply hand something like this over to the States. I think that would be extremely dangerous because things can change. I think one has to have some supervision and that should be in the Department of the Interior.

Mr. BREAUX. I think we heard the testimony this morning that the Department has been unable to directly oversee the administration of the program in all 50 States because of the lack of funds and the lack of manpower.

I would just like to make it clear that your society takes the position that if it is a suitable program and approved by the Federal Department, when it is submitted by States, you have no objections to the States running it within those guidelines?

Mrs. STEVENS. Not so long as it is of the same high quality.

I would say, since you mentioned this, however, that I think it is very important that there should be more funds for enforcement by the Department of the Interior. I think they do a very good job to the extent that they have the funds, and I think that is a vital consideration. Perhaps this committee can do something to insure that they do have more funds than they now have for enforcement purposes.

Mr. BREAUX. Does the society agree with the language that allows the Secretary of the Department to determine that a species is endangered in one particular area of its range and not endangered in other areas?

Mrs. STEVENS. I do not like to answer that specifically as to the language because I have not studied that carefully enough.

I think certain populations sometimes need to be protected, whereas the entire species might not require protection.

Mr. BREAUX. As I understand it, it makes no difference that a species might be endangered in one State but not in another; if it is endangered anywhere in the United States, it is placed on that list.

Mrs. STEVENS. Well, it makes it much more difficult to enforce a law if the animals are circulating around. It becomes doubly hard to enforce because if, for example, the animals go from Louisiana to Georgia, and then move on and the two States have different laws respecting the particular species, enforcement is made much more difficult.

Mr. BREAUX. Thank you, Mr. Chairman.

Thank you, Mrs. Stevens.

Mr. DINGELL. Mr. Eckhardt.

Mr. ECKHARDT. Thank you, Mr. Chairman.

I have no questions.

Mrs. STEVENS. Mr. Chairman, I might submit, in case you would like to have it for the record, the editorial that appeared in the New York Times at the conclusion of the Endangered Species Conference, and also this rather startling photograph from the New York Zoological Society of a graveyard in which the different animals that have become extinct have markers.

You may have seen this, Mr. Chairman, and you may not wish to have it in the record, but I thought, nevertheless, some members of the committee would like to look at it. It is the list of animals extinct in

the 1600's or earlier than those in the 1700's, and it shows, in other words, how the numbers get greater and greater as time goes on.

Mr. DINGELL. Without objection, the documents referred to will be received and reviewed by counsel for purposes of insertion into the record.

[The information is as follows:]

[From the New York Times, Mar. 4, 1973]

PROTECTING WILDLIFE

In the most far-reaching move yet made to save the endangered animal species of this planet, eighty nations have signed a convention to act in concert for their protection. What is most remarkable and encouraging about this agreement is the willingness of the signatories, including all the major powers except China, to include maritime creatures taken beyond national boundaries and all products derived from the animals specified.

Neither the United States nor Kenya, the two nations that took the lead in achieving the agreement, had reason to believe they would get as sweeping a commitment as they did, though inevitably there will still be difficulties. The convention unfortunately provides for no sanctions against violating nations, but the signatories are pledged to, and a system for monitoring import-export permits will insure, the kind of disclosure that governments will find it hard to treat lightly. Russell E. Train, chairman of the Council on Environmental Quality, also felt compelled to warn of unconscionable raids in the next few months on all endangered animals, a quick killing in more ways than one before the agreement can become effective.

Nevertheless, the conference marks a turning point in the long struggle to conserve the threatened species of the world, an event for which, among the Americans, Mr. Train and Christian A. Herter, Jr., who chaired the conference, deserve the greatest credit.



LIST OF LAND ANIMALS EXTINCT IN THE 1600'S OR EARLIER

Birds

Mauritian rail—Mauritius Island—killed for meat.
 Dodo—Mauritius Island—killed for meat and by introduced pigs.
 Mauritius broad-billed parrot—Mauritius Island—killed for meat.
 Rodriguez parakeet—Rodriguez Island—killed for meat.
 Rodriguez little owl—Rodriguez Island—habitat destroyed by agriculture.
 Poua—Chatham Island
 Ascension Island flightless crane—Ascension Island
 Bourbon pink pigeon—Reunion Island
 Bourbon parakeet—Reunion Island
 Mysterious macaw—West Indies
 Martinique macaw—Martinique

Mammals

European lion—Greece
 Algerian wild ass—North Africa
 Aurochs—Europe
 European wild horse—Europe
 "Quemi" of Oviedo—West Indies

Reptiles

Gadow's giant tortoise—Mauritius Island—killed for meat.
 New Providence guana—New Providence Island—killed for meat.
 Puerto Rican guana—Puerto Rico
 St. Thomas guana—St. Thomas, Virgin Islands
 Malagasy great tortoise—Madagascar—killed for meat.

LIST OF LAND ANIMALS EXTINCT IN THE 1700'S

Birds

Mauritius blue pigeon—Mauritius Island—hunted for meat.
 Guadeloupe parrot—Guadeloupe Island
 Raiatea parakeet—Society Islands
 Raiatea thrush—Society Islands—killed by feral house cats and introduced rats.
 Reunion fody—Reunion Island—habitat destroyed by agriculture
 Lesser moa—New Zealand
 Flightless night heron—Rodriguez Island
 Flightless blue rail—Rodriguez Island
 Tanna ground dove—Tanna Islands, New Hebrides
 Solitaire—Reunion Island
 Rodriguez Solitaire—Rodriguez Island
 Martinique parrot—Martinique
 Guadeloupe conure—Guadeloupe Island
 Jamaican red macaw—Jamaica
 Guadeloupe red macaw—Guadeloupe
 Dominican green-and-yellow macaw—Dominica

Mammals

Barbuda musk-rat—Barbuda Island
 Crooked Island hutia—Crooked Island
 Great Abaco hutia—Abaco Island
 Haitian hexolobodon—Haiti
 Puerto Rican isolobodon—Puerto Rico
 Haitian isolobodon—Haiti
 Narrow-toothed hutia—West Indies
 Ceiba Cave spiny rat—Puerto Rico
 Puerto Rican spiny rat—Puerto Rico
 Puerto Rican hystricomorph—Puerto Rico
 Puerto Rican giant rodent—Puerto Rico
 Steller's sea-cow—Arctic Ocean

Reptiles

Malagasy giant tortoise—Madagascar
 Farquhar Island giant tortoise—Farquhar Island—killed for meat.
 Reunion Island giant tortoise—Reunion Island—killed for meat.
 Commerson's giant tortoise—Rodriguez Island—killed for meat.

Vosmaer's giant tortoise—Rodriguez Island—killed for meat.
 Rodriguez Island giant tortoise—Rodriguez Island—killed for meat.
 Thin-legged giant tortoise—Mauritius Island—killed for meat.
 Absurd giant tortoise—Mauritius Island—killed for meat.
 Mauritius Island giant tortoise—Mauritius Island—killed for meat.
 Sauzier's giant tortoise—Mauritius Island—killed for meat.

LIST OF LAND ANIMALS EXTINCT IN THE 1800'S

Birds

Tasmanian emu—Tasmania—killed as alleged pest.
 Kangaroo Island emu—Kangaroo Island—forest habitat cut down.
 Spectacled cormorant—Bering Island—killed for feathers and eggs.
 Bonin night heron—Bonin Islands—killed by feral house cats and habitat destruction.
 Coues's gadwall—Washington Island—habitat destroyed.
 Labrador duck—Eastern North America—hunted for meat and habitat destroyed.
 New Zealand quail—New Zealand—killed by introduced animal disease.
 Himalaya quail—Himalayas—hunted for meat.
 Red-billed rail—Tahiti—killed by feral house cats and introduced rats.
 Jamaica wood rail—Jamaica—killed by introduced mongoose.
 Chatham Island banded rail—Chatham Island—killed by introduced rats and feral house cats.
 Auckland Island rail—Auckland Islands—killed by feral house cats.
 Chatham Island rail—Chatham Island—habitat destroyed by introduced goats and sheep.
 Hawaiian rail—Hawaii—killed by introduced mongoose.
 Kusaie Island crane—Kusaie Island—killed by introduced rats.
 Tristan Island gallinule—Tristan da Cunha—killed by feral dogs.
 White swamp hen—Lord Howe Island—killed for meat.
 Tahitian sandpiper—Tahiti—killed by feral pigs.
 Great auk—North Atlantic shores—eggs and young collected.
 New Zealand pigeon—Norfolk Island—habitat destroyed by agriculture.
 Norfolk Island parrot—Norfolk Island—killed as alleged pest.
 Cuba red macaw—Cuba—killed as alleged pest and individuals trapped as pets.
 Puerto Rico conure—Puerto Rico—habitat destroyed.
 Mascarene parrot—Reunion Island—forest habitat cut down.
 Seychelles Alexandrine parakeet—Seychelles—forest habitat cut down.
 Lord Howe Island kakariki—Lord Howe Island—killed as alleged pest.
 Tahiti parakeet—Tahiti—habitat destroyed.
 Guadeloupe burrowing owl—Maria Galante Island—killed by introduced mongoose.
 Antigua burrowing owl—Antigua and Nevis Islands—killed by introduced mongoose.
 North Island laughing owl—New Zealand—habitat destroyed and killed by introduced weasel.
 Jamaica pauraque—Jamaica—killed by feral house cats and introduced mongoose.
 Ryukyu kingfisher—Mayaku Island.
 Guadeloupe bewick's wren—Guadeloupe—habitat destroyed by introduced goats and sheep.
 Chatham Island fernbird—Pitt Island—habitat destroyed by introduced goats and agriculture.
 Long-legged warbler—Viti Levu Island—habitat destroyed by agriculture.
 Lord Howe Island grey warbler—Lord Howe Island—habitat destroyed.
 Lord Howe Island flycatcher—Lord Howe Island—habitat destroyed.
 Chatham Island bellbird—Chatham Island—killed by introduced rats.
 Kiorea—Hawaii—habitat destroyed.
 Oahu oo—Hawaii—forest habitat cut down.
 Guadalupe rufous-sided towhee—Guadalupe—habitat destroyed by introduced goats and sheep.
 Bonin Island grossbeak—Bonin Island—habitat destroyed by agriculture.
 Darwin's ground-finch—Galapagos.
 Sao Thome grossbeak weaver—Sao Thome Island—habitat destroyed.
 Burbon crested starling—Reunion Island—habitat destroyed.
 Mysterious starling Society Islands.

Jerdon's courser—India.
 St. Helena blue dove—St. Helena.
 Jamaican green-and-yellow macaw—Jamaica.
 Commerson's scops owl—Mauritius Island.
 Akialoa—Hawaiian Islands.
 Hopue—Hawaii.
 Lesser koa finch—Hawaii.
 Kona finch—Hawaii.
 Ula-ai-hawane—Hawaii.
 Mamo—Hawaii.
 Leguat's starling—Rodriguez and Met Islands.

Mammals

Blue buck—South Africa—killed as alleged pest.
 Eastern bison—Eastern North America—hunted for sport, meat and hides.
 Hispaniolan hutia—Hispaniola.
 Gilbert's rat-kangaroo—Australia.
 Portuguese ibex—Europe.
 Atlas bear—Northwest Africa.
 Cape lion—South Africa.
 Quagga—Southern Africa.
 Hairy-eared mouse lemur—Madagascar.
 Gull Island meadow mouse—Eastern U.S.A.
 Sea mink—Eastern North America.
 Eastern wapiti—Eastern North America.
 Oregon bison—Northwestern U.S.A.
 Puerto Rican long-nosed bat—Puerto Rico.
 Jamaican long-tongued bat—Jamaica.
 Puerto Rican long-tongued bat—Puerto Rico.
 Haitian long-tongued bat—Haiti.
 Jamaican rice rat—Jamaica.
 St. Vincent rice rat—St. Vincent Island.
 St. Lucia musk-rat—St. Lucia Island.
 Larger Cuban spiny rat—Cuba.
 Lesser Cuban spiny rat—Cuba.
 Antarctic wolf—Falkland Islands.
 Chatham Island rice rat—Chatham Island.

Reptiles

Charles Island giant tortoise—Charles Island—killed for food.
 Redonda Island anole—Redonda Island.
 Jamaica giant galliwasp—Jamaica.

LIST OF LAND ANIMALS EXTINCT IN THE 1900'S

Birds

Arabian ostrich—Saudi Arabia—killed for sport.
 Guadalupe storm petrel—Guadalupe—killed by feral house cats.
 Guadalupe Island caracara—Guadalupe—destroyed as an alleged pest.
 Indian pink-headed duck—India—killed for its meat.
 Auckland Island merganser—Auckland Islands—destroyed by introduced rats and by meat hunters.
 Crested shelduck—Korea—killed for its meat and feathers.
 Heath hen—Eastern U.S.A.—hunted for sport and its habitat destroyed.
 Delanlande's Madagascar coucal—Madagascar—habitat destroyed by agriculture.
 Wake Island rail—Wake Island—hunted for meat.
 Lysan Island rail—Lysan Island—destroyed by introduced rats.
 Fiji bar-winged rail—Viti Levu Island—Killed by introduced mongoose.
 Samoa woodrail—Samoa—killed by feral house cats and introduced rats.
 Iwo Jima rail—Iwo Jima—killed by feral house cats and introduced rats.
 Choiseul crested pigeon—Choiseul Island—killed by feral house cats.
 Passenger pigeon—Eastern North America—hunted for meat and for sport.
 Puerto Rican blue pigeon—Puerto Rico—habitat destroyed by agriculture.
 Bonin wood pigeon—Bonin Islands—killed by feral house cats.
 Culebra Island parrot—Culebra Island—habitat destroyed by agriculture and individuals trapped for pet trade.
 Carolina parakeet—Southeastern U.S.A.—destroyed as alleged pest.

Rodriguez ring-necked parakeet—Rodriguez Island—habitat destroyed by cutting forests.
 New Caledonian lorikeet—New Caledonia—forest habitat destroyed.
 Macquarie Island kakariki—Macquarie Island—killed by feral house cats.
 Seychelles Island owl—Seychelles Island—habitat destroyed by agriculture.
 Puerto Rican nighthawk—Puerto Rico—killed by introduced mongoose.
 Guadalupe red-shafted flicker—Guadalupe—habitat destroyed by introduced goats.
 Stephen Island wren—Stephen Island—killed by feral house cats.
 Guadeloupe wren—Guadeloupe—killed by introduced mongoose.
 Martinique wren—Martinique—killed by introduced mongoose.
 Lord Howe grey-headed blackbird—Lord Howe Island—killed by feral house cats and pigs.
 Kittlitz's thrush—Bonin Islands—killed by feral house cats and introduced rats.
 Lanai thrush—Lanai Island—destroyed by introduced animal disease.
 Molokai thrush—Molokai Island—killed by introduced rats and animal disease.
 Oahu thrush—Oahu Island—killed by introduced rats.
 Laysan millerbird—Laysan Island—habitat destroyed.
 Eyrean grass-wren—Australia—killed by feral house cats.
 Tongatabu Tahiti flycatcher—Tahiti—habitat destroyed.
 Hawaii oo—Hawaii—forest habitat cut down.
 Molokai oo—Hawaii—forest habitat cut down.
 Lord Howe Island white-eye—Lord Howe Island—forest habitat cut down.
 St. Christopher bullfinch—St. Christopher Island—killed by feral house cats.
 Lord Howe Island starling—Lord Howe Island—killed by introduced rats.
 Kusaie starling—Kusaie Island—killed by introduced rats.
 Huia—New Zealand—forest habitat cut down.
 New Caledonian wood rail—New Caledonia
 Great amakihi—Hawaii
 Black mamo—Molokai Island

Mammals

Freckled marsupial mouse—Australia
 New South Wales barred bandicoot—Australia
 Western barred bandicoot—Australia
 Nalpa bilby—Australia
 Gaimard's rat-kangaroo—Australia
 Broad-faced rat-kangaroo—Australia
 Parma wallaby—Australia
 Toolache wallaby—Australia
 White-tailed rat—Australia
 Christmas Island shrew—Christmas Island
 Maclear's rat—Malay Archipelago
 Bulldog rat—Malay Archipelago
 Japanese wolf—Japan
 Syrian wild ass—Middle East
 Schomburgk's deer—Asia
 Caucasian bison—Southeast Europe
 Pyrenean ibex—Europe
 Barbary lion—Africa
 Burchell's zebra—Africa
 Bulbal hartebeest—Africa
 Rufous gazelle—Africa
 Long-eared kit fox—North America
 Newfoundland wolf—Newfoundland
 Florida wolf—Southeastern U.S.A.
 Eastern cougar—Eastern U.S.A.
 Arizona wapiti—Southwest U.S.A.
 Badlands bighorn—Northwest U.S.A.
 Martinique musk-rat—Martinique
 James Island rice rat—James Island

Reptiles

Seychelles giant tortoise—Seychelles Islands—hunted for food
 Jervis Island giant tortoise—Jervis Island—hunted for food
 Abington Island giant tortoise—Abington Island—hunted for food
 Jamaican guana—Jamaica—killed by introduced mongoose and sport hunting.

Sombrero Island ground lizard—Sombrero Island.

St. Croix racer—St. Croix Island—killed by introduced mongoose.

Marie Galante racer—Marie Galante Island—killed by mongoose.

St. Lucia racer—St. Lucia Island—killed by introduced mongoose.

Martinique racer—Martinique—killed by introduced mongoose.

Vegas Valley leopard frog—Las Vegas—habitat destroyed.

Mr. DINGELL. You mentioned here the provision of H.R. 4758, authorizing the Secretary to immediately modify, suspend, or revoke provisions. This is an excellent one which we feel should be recommended. Do you think it would be mandatory or permissive?

Mrs. STEVENS. It would be preferable to have it mandatory, definitely.

Mr. DINGELL. Mr. Rountree.

Mr. ROUNTREE. No questions. Thank you.

Mr. DINGELL. Well, Mrs. Stevens, it is a pleasure to have you here. We thank you.

Mrs. STEVENS. Thank you.

Mr. DINGELL. Our next witness is Dr. Howard S. Irwin, president of the New York Botanical Garden.

We appreciate your coming. If you will identify yourself fully, with your name and address for the reporter, we will be most pleased to receive your statement.

Mr. IRWIN. Howard S. Irwin, president of the New York Botanical Garden.

STATEMENT OF HOWARD S. IRWIN, PRESIDENT, NEW YORK BOTANICAL GARDEN

Mr. IRWIN. Thank you, Mr. Chairman. I appreciate the opportunity to be here, and I thank the committee for this opportunity to testify about the need for legislation to conserve and protect endangered species of native plantlife.

I have a brief statement which I shall read. Regrettably, I was contacted very late last week and have not been able to produce it in sufficient copies.

Mr. DINGELL. That is all right. We appreciate your presence.

Mr. IRWIN. There are about 18,000 species of flowering plants native to the United States. Included in this number are all the trees, shrubs, and other large woody plants we know, as well as a great array of smaller plants. There is a still larger number of flowerless plant species, including ferns, mosses, liverworts, fungi, algae, and the like. I will confine my remarks to the flowering plants, since on the whole the numbers of individuals per species is lower, their breeding systems are more readily disturbed by human activities, and their requirements most often conflict with the demands of our culture.

Green plants are at the base of the pyramid of life, furnishing all the food for animals, directly or indirectly; much of the oxygen; and a majority of the habitat requirements. Without green plants, no other organisms could live.

The evolution of plants, as with animals, is an active, ongoing process by which species adapt to changing conditions. Those species which cannot adapt die out and become extinct. Other species develop through complex genetic changes within a species or between or among

two or more species, the emerging mutant or hybrid sometimes better suited to conditions than those from which it sprang.

However, all of this is relatively academic in face of the fact that modern man's predilection to change natural environments to suit his whim and fancy far exceeds the adaptive capacity of most wild species of plants. Urbanization, agriculture, and transportation all require drastic changes in natural environments which essentially eliminate the native flora from the areas concerned, and by the generation of pollutants spread toxic substances ever further afield.

Moreover, man's intense utilization of some wild plants, such as timber trees, cacti, and orchids, far exceeds their reproductive capacity. They are removed at a rate faster than their reproductive mechanisms and the constraints of habitat will allow their replacement in kind.

Today, a significant proportion of our native flora is rare and therefore endangered. In California alone, where some 5,000 species of flowering plants grow, 540 species, or about 10 percent, are rare and endangered. The California Native Plant Society, which conducted a survey last year of the plant resources of that State, found that within the last hundred years, 26 species of plants have become extinct. Of the 540 rare and endangered species, 125 grow on the protected lands of a State or Federal agency, and so can be protected from further decimation.

The California experience shows that mechanisms exist to determine the status of a regional flora. The persons best able to assess the relative endangerment of species of plants are systematic botanists. These are trained scientists whose research may be focused on all of the plants occurring in a given area, as in the flora of California, or of the Northeast, or of North America. Other systematic botanists concentrate on studies of the diversity of species within a plant group, such as studies of all oaks, or pines, or cacti.

Most systematic botanists in the United States belong to a single professional society, the American Society of Plant Taxonomists. This organization could coordinate efforts to obtain information and recommendations about rare and endangered species from professional systematists throughout the country.

The most effective means to protect the diversity of plant species in this country is to protect their environments. When that becomes impossible, some species can be kept going by transplanting them to similar environments elsewhere or by cultivating them in artificially controlled environments in botanical gardens.

Basic to the need for protection of endangered species of plants is the establishment of a coordinated national inventory of North American plants with a computerized data bank.

As an interim measure, some local groups, such as the California Native Plant Society and the Wild Flower Preservation Society, have begun assembling valuable data. By extrapolating from what is available, some 1,200 species of native American plants may be endangered. The problem is much too serious to be ignored and should be addressed.

If I may, Mr. Chairman, I have a few recommendations which are not based on the legislation, copies of which only reached me this morning, but rather are couched on more general premises.

First, the collection of endangered species by the private amateur should be discouraged. Any list of plant species to be proscribed should

be accompanied by the transferral of identification responsibility to the collector.

This is a procedure which those of us in the business of collecting scientific specimens in other countries are forced to abide by, and it does work.

Mr. DINGELL. Doctor, would you like to amplify on that?

I think it is a good point

Mr. IRWIN. Well, for example, the New York Botanical Garden has a series of long exploration programs in Latin America and these countries now have come to require that when a species is included in one of our collections and it is proscribed for any reason for export from that country, that we must tentatively identify it and present it. And so long as it has been collected in accordance with the conditions that have been handed down by whatever authoritative body in that country has dictated, then the exportation of that specimen—of an endangered species, or proscribed species—is permitted.

Second, the collection of wild plants for sale should be carefully controlled. Species endangerment is one result of indiscriminate collection of wild plants. More serious is the ecological imbalance that follows the sudden and traumatic removal of elements of the ecosystem.

This is just as serious as the extinction of a species.

Third, the exportation of endangered species across State or national borders should be forbidden, except by special permit.

And, after all, that is what this legislation is about.

Fourth, seriously endangered species should be salvaged under professional supervision, as through seed collection or limited transplantation to protected environments or to botanical gardens.

That completes my testimony, Mr. Chairman.

Mr. DINGELL. Thank you, Doctor.

Mr. Breaux.

Mr. BREAUX. Thank you, Mr. Chairman.

I have no questions.

Mr. DINGELL. Mr. Eckhardt.

Mr. ECKHARDT. Doctor, I am very much interested in your testimony, particularly in view of the fact that I think we only deal with endangered flora in section 11 of H.R. 37, which calls for more study rather than any immediate action.

Mr. IRWIN. Yes.

Mr. ECKHARDT. I am wondering if we can afford merely to study at this time—

Mr. IRWIN. No, I think we need to go a good deal further, but I think it is also fair to admit that at this stage our knowledge of the endangerment of elements of the flora is not nearly as well refined as it is for the animals, and what I am suggesting here, and in fact what I have already begun to try to implement, is to arrive at the state where we do know and are in a position to recommend a plant list for endangered citation and regulation.

There is no list yet, and I am suggesting it be undertaken by the American Society of Plant Taxonomists.

Mr. ECKHARDT. Well, we know that when zoological and plant life ceases to exist, it cannot be reconstituted, and the same thing is true of biological substances, but the thing that concerns me more than that

is the related system, and that certain organic complexes will never be known if the biological complex in which they exist becomes extinct before we know what that organic composition was.

For instance, we could have lost, I assume, any way of discovering penicillin if that particular mold had been extinct before the time it was discovered, and this concerns me as a human need even more than the question of ecological balance, and, of course, that is extremely important.

Mr. IRWIN. Well, they are closely related, sir, and I share your concern.

Several of us now are very actively pursuing this line for the very reasons you suggest in places of greatest biological complexity, such as exist in South America. The state of our knowledge there is even more precarious than it is here in the confines of these United States.

Mr. ECKHARDT. How would you suggest that we go farther in this bill than we have done in section 11, if you would so suggest?

Mr. IRWIN. Well, I have suggested, and I think it is about as far as we can go now, and that is through the combined efforts of, I am sure, of a very willing scientific cadre to make recommendations of not only species to be preserved, but where appropriate, environments to be preserved. This is really the problem. It is not the question of our salvaging an evolutionary experiment which has more or less succeeded and may now be threatened, because that is what an endangered species is, but it is rather to salvage the conditions under which that species has evolved, along with others, and this boils down to real estate. It is not easy to do, but, as I pointed out in the California study, approximately a quarter of the endangered species, quite unwittingly, are in a relatively preserved state in view of the fact that they are on Government-controlled land. Although I am not acquainted with all the details there, this is probably because these areas were very scenic or were valuable for some other reasons, and these endangered species are very endemic to out-of-the-way places, but it has importance to us because, as you say, once they are gone, they are gone for good. There is no practical way of reconstituting them.

Mr. ECKHARDT. Well, thank you, Doctor, for raising to me what seems to be one of the most serious aspects for preserving endangered species. Thank you.

Mr. DINGELL. Mr. Rountree.

Mr. ROUNTREE. I am sure you are aware of the convention concerning flora. You probably have not had an opportunity to evaluate a structure, but presumably, within the context of your recommendations, what you are thinking about is, one, a research and development effort, and two, some Federal level management authority, and, three, some type of State input, and a heavy reliance on the private scientific sector of those that would be concerned about flora.

This is the problem we are facing if we are going to amend the bill. How do we structure the bill?

Mr. IRWIN. Yes, sir.

Mr. ROUNTREE. A couple of things I think you might want to submit, also, is the level or the rate of decline of the various species that are involved or give some type of estimate as to how serious the problem really is with regard to the next 5 years, 10 years, and this type of thing. Plus, in addition, some information on what really practical,

commercial, beneficial, or adverse impact is there in this area of flora.

Mr. IRWIN. I am not sure I understand that last point.

Mr. ROUNTREE. Well, you mentioned, I think, in your testimony, the commercial sale of wild plants and/or seeds. Certainly this must be regulated in some context by the various States involved, but across the country what level of funding are we talking about? What level of commercial activity; whether big business, small business, or this type of thing.

Have you considered the philosophy that I think was mentioned in relation to the Stockholm Conference with regard to the seedbank concept?

Mr. IRWIN. Yes. This is very useful and it certainly is a line along which we could proceed, but once again, I would point out that unless the collection and preservation of seed is done very knowledgeably and also the collection of it is indeed reflective of natural variation, all we are really doing with seed collection is preserving one aspect, of the total variation within any species, and it tends to reduce the value of the seedbank below what the value of the seedbank could be.

For example, the pictorial illustration of a species really does not tell you the whole story. It gives you one stake view of it, but it does not cover all of its variations through its natural range, and if this is to be done, if it is to be done in an ideal way, we would want to do more than just preserve one set of genetic combinations for one species.

Mr. ROUNTREE. Presumably, as you develop a research and development basis, you will be able to make a better decision.

Mr. IRWIN. That is right.

Mr. ROUNTREE. Two more questions, and I will quit, Mr. Chairman.

I find it difficult in really getting fairly concise and clear scientific definitions of flora, and also in that vein, as a practical matter, from the standpoint of Federal authority or the States, or what have you, how far down the ecological chain do we go.

Presumably it would cost a tremendous amount of money, and I am just wondering whether there should be some priorities placed as to what we are going to attack first. If you could address yourself to that, I would appreciate it.

Mr. IRWIN. Yes. Well, I am hardly prepared to do that now except to say that for each one of these groups in this scale, as you mentioned, there are persons who are actually concerned and are studying its component species. The further down we go in the scale of complexity, the less the likelihood of endangerment because of the abundance of individuals, and their lesser direct use by humans, and the smaller number of species that are economically important, but there are great gaps in knowledge here.

Mr. ROUNTREE. Thank you, Mr. Chairman.

Mr. DINGELL. Mr. Potter.

Mr. POTTER. There has been a great deal of discussion of the draft of the International Convention for Endangered Species.

That draft addresses itself primarily to restrictions on trade of members of endangered species, whereas, I take it, the thrust of your reaction is that the pressures in trade are relatively insignificant as opposed to the factor of habitat destruction, which is the primary factor which endangers the plants.

Is that correct?

Mr. IRWIN. Well, the priorities are correct; yes. I certainly do not minimize the effect of collecting, for example, as it affects timber trees, some of which are in the very abbreviated list of plants that were appended to the convention, but the most serious aspect of the preservation of endangered species of plants is the preservation of their habitats.

One of the reasons they are endangered is because of their inability to adjust to traumatic man-influenced change. There are really only two courses open to us, and they are, if the habitat is lost, to cultivate them under similar conditions elsewhere, or to provide artificial conditions for them to keep the gene set going, to keep it available.

Mr. POTTER. Would it be fair to assume that the destruction of habitat is liable to increase substantially in the near future as we are driven further and further out of the temperate areas and valleys where man has developed and grown?

Mr. IRWIN. Absolutely.

Mr. POTTER. That puts something of an additional incentive on time, I should think.

Mr. IRWIN. It does. In fact, it is that urgency which is on the shoulders of all of us in this business.

Mr. POTTER. One suggestion that has been made, and you might not be able to respond to it completely now, but that would be to take one or other of the bills that have been sent to you and simply add "and flora." Fish, wildlife, and flora will be protected under the pertinent mechanisms, but that has been criticized because you have different problems with respect to plants.

I would appreciate it, though, if you would be able to give us your reaction to this, to tell us whether—it might not be enough all by itself—but it might be a good first step.

Mr. IRWIN. Well, I have hardly had a chance to read both bills. In fact, I have not even seen H.R. 37, and perhaps I could get a copy of it here. But I would be happy to comment on them both at a later time.

Mr. POTTER. If there were to be a U.S. internal mechanism for regulating and protecting endangered species of flora, what agency ought that to be?

Mr. IRWIN. I am not really sure. I have not addressed myself to this, and I am really not sure.

At present, some of the States seem to be able to do so; that is, they have regulatory bodies, and also a level of concern, particularly where endangerment is greatest. It is greatest in the mountainous States, and in the Southwest. It is progressively less so as one moves east and north.

Mr. POTTER. I heard recently that almost all of the American cacti are on the endangered species list.

Mr. IRWIN. Yes, without designation, the cacti in general. The reason for this is that cacti are collected indiscriminately by commercial interests in the Southwest and put in the horticultural trade, and for the greater part they are not even identified, just transplanted as small plants, due to the fact that it is very difficult to grow them from seed under ordinary propagative processes.

This has resulted in serious decimation of practically all types of cacti in Arizona, New Mexico, and parts of Texas.

Mr. POTTER. One of the criticisms that has been made to the Department of Agriculture as to regulating the flora is that the Department of Agriculture seems to be a little indifferent to noncash crops, and I suspect that is one of the facts we have to deal with.

Mr. IRWIN. Yes, it is.

Mr. POTTER. You might also give some thought to the possibility of developing some sort of a private oversight mechanism, if you will, so that organizations such as yours would be in a position to review the activities of the Federal regulatory agency, and to blow the whistle on them when it appears appropriate.

Mr. IRWIN. Yes.

Mr. POTTER. This morning, a representative of the Department of Agriculture indicated the well-known statistic that about a third of the plants in the United States are federally owned. It occurs to me that most of the States are those which we are talking about, plants in the Southwest and plants in the mountains.

Mr. IRWIN. Yes.

Mr. POTTER. And if so, this seems to be an ideal way to protect these flora, by providing restraints over the types of acts we allow to be conducted on those lands.

Mr. IRWIN. Yes, it would seem to, as long as the mechanism for enforcement is reasonable and can actually be carried out. Once the plants become of commercial interest, of course, there are all types of subterfuges engaged in, but if it is just occasional "orchid snatching" or flower picking, which is the case among unknowledgeable or unwitting fanciers, effective regulation is much easier.

Mr. POTTER. I had the general feeling that as far as protecting plants from trade, that our problem here is a mechanical one; designating the types of plants going into trade and providing restraints.

Mr. IRWIN. That is true, but it is fraught with a lot of difficulty. Very practical difficulties, to be sure. For example, in the cactus area, which we are talking about, few of the people, either the agriculture control or other agencies, really know these plants well enough to distinguish between the endangered and nonendangered species. Therefore the practice is to protect them all. Such is the case for orchids, less in the United States but especially in South America, and they cannot be distinguished as to species unless they are in flower. When out of flower neither the importing nor exporting country can tell the species, and therefore these plants should be marked by the people who grew them. And these are some of the problems that do arise in attempting to discriminate between a truly endangered species and its relatives.

Mr. POTTER. Well, the Secretary is allowed to regulate unendangered species when they could be confused.

Mr. IRWIN. Yes.

Mr. POTTER. The destruction of habitat is impeded by finding the funds to protect them and set them aside.

Mr. IRWIN. Correct.

Mr. DINGELL. I think you can see that we are all grouping up here. Doctor, trying to figure out what we are going to do about the plants.

Mr. IRWIN. Well, I wish I could have come better prepared, but perhaps at some later time—

Mr. DINGELL. Well, as I indicated earlier, the committee intends

to keep the record open for a period of time, allowing the appropriate people to make additions to the record, and so I hope you will feel free to do so.

Mr. IRWIN. I shall.

Thank you.

Mr. DINGELL. If there is no further business to come before the committee, the committee will stand in recess until 10 o'clock tomorrow morning.

[Whereupon, at 3:35 p.m., the subcommittee was recessed, to reconvene at 10 a.m., the following day.]

ENDANGERED SPECIES

TUESDAY, MARCH 27, 1973

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON FISHERIES AND WILDLIFE
CONSERVATION AND THE ENVIRONMENT OF THE
COMMITTEE ON MERCHANT MARINE AND FISHERIES

Washington, D.C.

The subcommittee met, pursuant to recess, at 10:05 a.m., in room 1334, Longworth Office Building, the Honorable John D. Dingell (chairman of the subcommittee) presiding.

Mr. DINGELL. The subcommittee will please come to order.

This is a continuation of hearings on a series of bills related to the protection and preservation of endangered species.

I am pleased to welcome as our first witness my good friend and colleague, Mr. Annunzio. He is a cosponsor of one of the bills before us today and has an outstanding record of support for measures to conserve and protect the natural resources of our country. Mr. Annunzio, we are pleased to have you with us.

STATEMENT OF HON. FRANK ANNUNZIO, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ILLINOIS

Mr. ANNUNZIO. Thank you, Mr. Chairman. As a cosponsor of H.R. 470, I am very pleased to have this opportunity to express my deep convictions about the need for its enactment. Our wildlife has always been one of our most precious resources. Without it the balance of nature, which is the basis for our survival, would be destroyed. The early settlers depended for their survival on game for food and clothing. They were fortunate—game was abundant.

Once, flights of passenger pigeons darkened the sky for hours on end. Bison herds covered the prairie for as far as the eye could see. James Audubon wrote that he once saw a continuous stream of passenger pigeons that included more than 1 billion birds which he estimated would consume more than 8.5 million bushels of grain a day.

But progress, which has always been a double-edge sword, began cutting swiftly into our wildlife stocks. Our population grew, our frontiers expanded, and our wildlife was pushed back farther and farther. Cover was cut down and natural food supplies were often wiped out by settlers. With our powerful and efficient technology, we have disturbed the forces and rhythms of nature. We have altered the natural environment to fit our own needs and in doing so have exploited the world's resources and destroyed much of what we need to keep us alive. As man has emerged as a more and more dominant species, there has been a drastically accelerated rate of loss of other species. We have moved so quickly in this direction that we have lost many

species of animals. Unfortunately, before we reverse the trend, we will probably lose more.

There was abundant game on this continent, but it quickly dwindled. By 1801 there were no more buffalo in Pennsylvania. By 1845 there were no more elk in New York State. By the middle of the 19th century the wild turkey had disappeared from both States. And of course, as every American school child knows, the last passenger pigeon died in 1914.

Without some positive planning and firm action the next 25 years will bring the demise of another 40 mammals and birds, and possibly another 25 species of fish. That is, of course, unless we do something positive to prevent the losses from occurring.

All wildlife must be protected. But at this point, our first order of business must be to protect those species which are rare and endangered. There is no time to spare. Once the great cats, the American alligator, the soaring California condors and southern bald eagles are gone, nothing can bring them back. Once the proud eastern timber wolf and the red wolf are destroyed, we will not have them again. No force on earth could ever recreate the whooping crane or the brown pelican. These creatures cannot be stockpiled, but they can be protected and preserved and allowed to rebuild their numbers.

The bill we are considering today can make significant inroads into the matter of preserving and protecting our endangered wildlife. I am proud to be a cosponsor of this bill because I think it is more than a stop-gap response to emotional pleas. It is a well-conceived and well thought-out piece of legislation which hits hard at the problems because it strikes on a number of fronts.

First of all, it gives the Secretary of the Interior broad authority to acquire lands for the conservation, protection, and restoration and propagation of the animals on the list in the "Red Book." This is important because animals need cover for breeding, nesting, and feeding. Preservation of greater land and water areas for natural habitats must be a priority item.

Second, the bill recognizes the need for cooperation on all levels in order to make the program effective. Under H.R. 470 the Secretaries of the Interior and Agriculture would work together so that various U.S. Department of Agriculture conservation programs can be better used for wildlife conservation. Though the fate of some of these programs is uncertain at the present time, the watershed protection and flood prevention program, the Great Plains program, the resource conservation and development program, the water bank program, and the rural environmental assistance program all are possible avenues for improved wildlife management. The Secretary of Agriculture would be authorized to bear the full cost of projects carried out under these programs, which will serve to meet the objectives of this bill. Additionally, the Secretary of Agriculture would carry out research into improved methods of establishing vegetative and structural cover for wildlife.

No efforts toward saving our endangered or rare species can be made effective by a single agency, a single State, or a single nation. Just as we could not save our oceans alone, neither could we save migratory birds unless we work together. This bill provides for the needed cooperation. As I said, the executive agencies will work together, so will the

Federal Government and the various States. The Secretary of the Interior would study the possible functions and responsibilities of each State as far as management and protection of wildlife is concerned. He would then submit a report of his determinations to Congress along with recommendations for Federal assistance to States.

States would be required under the measure to develop their own programs of management and protection, consistent with the policies and purposes of the bill. Once the Secretary determines that the State program is adequate, he would delegate to the State authority to manage and protect those endangered species resident to their area.

We have already made great strides toward an international effort last year in Stockholm and earlier this month in Washington. The Marine Mammal Protection Act enacted by the last Congress took into account the necessity for international cooperation. But so much more needs to be done. Cooperation means far more than signing a piece of paper. It means more than working within our own national borders. It also means helping in other nations—with financial and technical assistance where needed. Under H.R. 470, foreign currencies accruing to the United States under Public Law 480—the food for peace program—would be used to assist foreign countries develop and initiate programs of conservation, protection, restoration, and propagation of endangered species.

Further, the Secretary of Commerce, through the Secretary of State, would encourage other nations to enter into bilateral and multilateral agreements for endangered species conservation.

Something else which is considered in this bill which has been missing from other proposed legislation is the endangered flora of the world. Under the bill, the Secretary of the Smithsonian Institution would be authorized and directed to review endangered flora and methods of protecting them and submit a report to Congress on the matter.

Mr. Chairman, we are an intelligent and concerned nation. We are now aware of our environmental damage. We are increasingly more willing to right our wrongs. The bill we are considering today will protect our endangered animals so they do not become extinct. I urge careful but swift action by this committee on H.R. 470.

Thank you.

Mr. DINGELL. That was an excellent statement. The subcommittee appreciates your time this morning.

Our next witness is our good friend from New Jersey, the Honorable Henry Helstoski.

STATEMENT OF HON. HENRY HELSTOSKI, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW JERSEY

Mr. HELSTOSKI. Thank you Mr. Chairman. I am here today to indicate my strong support for the endangered species protection legislation introduced by my distinguished colleague from Michigan. This legislation reflects our growing awareness that the continued existence of flora and fauna on our spaceship Earth have a direct bearing on the continued existence of man.

Of particular interest, I believe, is the economic persuasion to be employed by the United States to reduce the exploitation of international fisheries by other nations. Foreign whale catches, for instance,

have nearly depleted the supply worldwide, and we must take swift action to save these creatures. When the economic power of the United States refuse to purchase products made from endangered species, any nation would think twice before ordering or allowing massive and indiscriminate harvests.

Mr. Chairman, I do not wish to take time from those other qualified witnesses who are here to discuss the specific impact of this legislation. I merely wish to state that I recognize the need for this legislation, urge the committee to act on this measure as quickly as possible, and to indicate that I stand ready to support it.

Thank you.

Mr. DINGELL. An excellent and well-prepared statement, Congressman.

Our next witness will be the gentleman from Florida, the Honorable Bill Young.

STATEMENT OF HON. C. W. BILL YOUNG, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF FLORIDA

Mr. YOUNG. Mr. Chairman, thank you for the opportunity to speak in behalf of H.R. 1461, the Endangered Species Act of 1973 which I introduced on January 6. As you know, many of the world's fish and wildlife resources are diminishing rapidly and this measure would strengthen existing regulations to protect endangered species.

Specifically, this bill would provide for the administration of an endangered species program jointly by the Departments of Interior and Commerce. There would be an annual review of the endangered species list, and States would be encouraged to adopt their own preservation programs.

The Department of Interior would have authority to control exports of native endangered species just as it now controls imports of endangered wildlife, thus allowing us to do as much for our own wildlife as we are doing for foreign endangered species.

H.R. 1461 also would allow us to conserve not those species of wildlife now threatened with extinction but those which are diminishing at a rapid rate. The eastern timber wolf, for example, the wolverine and the cougar in the United States are in trouble although not yet facing extinction. The Australian kangaroo is another species declining at an alarming pace.

The Endangered Species Act of 1973 will help do a more effective job in preserving our marine and wildlife for the enrichment of this and future generations. Hopefully, a worldwide program eventually will be worked out for the cooperative protection of endangered species everywhere.

Mr. DINGELL. The Chair thanks you for your statement.

I would now like to call another colleague from the State of New Jersey, the very capable gentleman, Bob Roe.

STATEMENT OF HON. ROBERT A. ROE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW JERSEY

Mr. ROE. Mr. Chairman, as the Subcommittee on Fisheries and Wildlife Conservation and the Environment begins hearings on the

matter of protecting endangered species, I believe it is most important to emphasize, for the record, the success of the original Endangered Species Act of 1966, as amended, in bringing many species of threatened wildlife and fish under protection. In effect, that act marked a milestone in this Nation's quest for the preservation of our natural environment for present and future generations around the globe. According to the third annual report of the Council on Environmental Quality, nearly 400 species are currently listed as endangered, either in the United States or worldwide. Mr. Chairman, without that act the matter we are considering here today would take on the proportions coincident to crisis. We are, I believe, fortunate to be able to plan, rationally, for the future protection of wildlife without the element of present crisis hanging over our heads.

But we must not deceive ourselves nor should we become complacent and lazy in the knowledge that past actions of Congress have been successful. We need only to read further in the Council's report to understand the necessity of improving on our past efforts. The Council states: "Although there are some species once threatened with extinction that are now thought to have been saved, the threat remains and can be expected to grow in intensity as habitat is converted to human use." Clearly, the reasons, both common-sense and elemental, that underlie the truth of this statement emphatically demonstrate the need for further, more expansive, more detailed and more definite legislative measures to insure the future survival of all wildlife for environmental balance.

On February 5, 1973, I was pleased to joint with other members of Congress in sponsoring H.R. 3696; legislation that will expand the provisions of the 1966 act and 1969 amendments that provided this Nation with the groundwork to protect threatened species of wildlife. First, this bill will provide that both the Departments of Interior and Commerce will jointly administer the execution of the program to insure that maximum responsibility and concern be vested with all agencies having jurisdictional control over the matter of wildlife. Second, the bill will remove the distinction now existing between native and worldwide endangered species, and extend existing prohibitions to include the export as well as the import of listed endangered species. Third, the bill will extend present controls to reach species and subspecies not only threatened with extinction, but also those which are likely to be threatened with extinction within the near future.

Mr. Chairman, these are practical and sound managerial revisions to present law that are necessary if we are to both build upon the successes of the past and develop the needed regulations for the future preservation and conservation of wildlife.

In my own State of New Jersey, 5 percent of our land area consists of tidal salt marsh, which is critical as a nursery to many species of commercial and sport fish and as a feeding ground to hundreds of species of migratory birds.

Land of this type is crucial to the issue of endangered species; and in response, the State Department of Environmental Protection implemented regulations to protect sensitive wetland areas. Regulations were adopted banning the dumping of garbage, trash or rubbish; the discharging of sewage or industrial waste; the application of persistent pesticides; and the use of vehicles in certain defined wetland areas.

The regulations further established a permit system requiring an owner of wetlands to obtain permission from the Department before engaging in any construction or certain other activities on his land. These were necessary steps, Mr. Chairman, because our State, as I know other States, particularly in the Northeast, are severely pressed to intricately balance commercial, living, recreation and wildlife demands. We desperately need both the resources and support of the Federal Government to properly bolster, on the Federal level, the efforts the States are making in improving the environment across the entire Nation for both man and animal.

The results of Federal action with respect to this legislation will be a positive and demonstrable step in stabilizing an environment stretched thin by a multitude of human demands. If we have learned one lesson over the past few decades it is that mankind carries the enormous obligation and responsibility to preserve, if but for himself, that delicate balance of nature that insures his very own survival as a species. That, Mr. Chairman, is the very heart of the issue before us today.

Mr. DINGELL. The subcommittee thanks you for giving us a very informative statement. If there are no questions we will call upon our good friend and conservationist, Hon. G. William Whitehurst.

STATEMENT OF HON. G. WILLIAM WHITEHURST, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF VIRGINIA

Mr. WHITEHURST. Mr. Chairman and members of the House subcommittee, it was with great satisfaction that I followed the proceedings of the International Convention on Rare and Endangered Species. The signing of this convention indicates world concern on threatened and endangered species; congruent with this concern, I have sponsored several bills that provide for, and encourage, protection of several threatened species. For your information, those bills include the following:

H.R. 1270 (5753) Require Secretary of the Interior to make study of dolphin and porpoises in order to develop adequate conservation measures—sponsored

H.R. 1271 Require Secretary of the Interior to make study of wolf in order to develop adequate conservation measures—sponsored

H.R. 1272 (4690) Create fund in U.S. Treasury to be known as fund for endangered wildlife—sponsored

H.J. Res. 118 Calling for an immediate and appropriate moratorium on killing of polar bears—sponsored

H.J. Res. 119 (355) Calling for an immediate moratorium on killing of the Eastern timber wolf—sponsored

The concern for protection of threatened and endangered species is a concern for the future of our planet. The threat to wildlife—the polar bears of the Arctic, whales of the sea, or the leopards of the Serengeti—is in reality a part of the threat to mankind from degradation of his environment.

In the past few days, you have heard a great amount of testimony on behalf of rare and endangered wildlife—and justly so. Extinction

of wildlife species is increasing at an alarming rate. One of every ten species of wildlife in the world is subject to serious threat. In the United States, 15 percent of the wildlife species are endangered. Of the recorded extinctions of mammals over the last 2,000 years, fully half have occurred within the last 60 years. But this is not merely a half-century-old problem; in the last 10 years, 8 percent of all mammal extinctions have taken place.

We have taken many aggressive steps to reverse this trend and light the spark of concern. The Endangered Species Protection Acts of 1966 and 1969 and the Lacy Act have provided a solid foundation for us to build on. We must continue that construction. Today, the future of many kinds of wildlife depends on how brightly burns that spark.

As Aldo Leopold observed on the extinction of the passenger pigeon: "For one species to mourn the death of another is a new thing under the Sun. We who have lost our pigeons, mourn the loss. Had the funeral been ours, the pigeons would hardly have mourned us. In this fact, lies evidence of our superiority over the beasts." Man's wisdom and experience have not been extensive enough to grasp the full significance of the loss of a species of wildlife. Each occupies a niche and makes a contribution to the whole life. We cannot set a dollar value on a whooping crane, an ivory-billed woodpecker, or a California Condor—the biological impact of forever removing a form from the environment may not always be readily discernable, but something of value has been lost.

We must continue to provide research, protect existing habitat, and develop additional habitat for threatened species. Our efforts have not gone unrewarded and the trend of extermination has been reversed for several species. The number of key deer (of the lower Florida keys) was estimated to be 30 in 1949. Protective legislation and establishment of the National Key Deer Refuge in 1953 have helped this resilient deer and its numbers have increased significantly. The number of whooping cranes has slowly reflected our measure of concern and the trumpeter swan is a dramatic example of what we can do.

We must continue and build on our efforts. I urge this subcommittee to develop the building blocks—the legislation—for an Endangered Species Conservation Act of 1973 and I support and commend my colleagues for their proposed bills.

MR. DINGELL. An excellent statement, Congressman. Our next witness this morning will be the gentleman from Pennsylvania, the Honorable Lawrence Coughlin.

STATEMENT OF HON. LAWRENCE COUGHLIN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF PENNSYLVANIA

MR. COUGHLIN. Mr. Chairman, I am pleased to testify for H.R. 5321, a bill I have introduced to ban use of toxic chemicals for predator control, to control damage by predators through strict and selective means, to create a research program for control and conservation of predatory animals, and for other purposes to implement this legislation.

In introducing this measure, I sought to place in proper perspective the issue of controlling predators and their depredations which, I sub-

mit, are grossly exaggerated. Yet, it is important that there be approved methods with which to deal with specific instances of predator damage to livestock and crops.

H.R. 5321 places into law the executive order of February 1972 which halted the use of poisons to destroy predators on any Federal lands. The force of law is necessary to guarantee compliance. This bill not only places the ban into law, but goes beyond that in presenting clear and effective policies to insure that predatory animals continue to survive in this country.

Before describing how this legislation would accomplish these ends, I think we all recognize that effectual enforcement is the key to making the law work. The measure provides that the Secretary of the Interior, after publication of proposed regulations in the Federal Register and providing time for public comment, would approve State programs that meet the standards established.

The State program, by terms of this act, would be approved and conducted by the agency designated by the State for wildlife management.

Making wildlife management agencies responsible for administering the State programs seems to me a necessary and prudent arrangement. This avoids any implication or, if the individual case may be, any collusion in resolving predator control issues between often conflicting interests of livestock raisers and wildlife advocates. I think it is a fair statement to say that an agricultural agency might most naturally be inclined to favor ranchers and farmers.

Moreover, the balancing of contrasting interests would tend to prevent abuse on either side of the issue. With State wildlife management agencies administering the programs, I feel equitable solutions would evolve which, in the long run, can only prove advantageous to both private and public interests.

This is especially important since H.R. 5321 contains vital provisions to prevent the promiscuous killing of birds, mammals and reptiles by ending the old "broadcast" system of poisoned baits in favor of a selective system for use in specifically proven instances of predator damage.

Both the primary and secondary effects of the "broadcast" system of predator control have been shown to be extremely harmful to our wildlife species. Widespread distribution of poisoned baits, even at first glance, appears as an antiquated and dangerous method of dealing with specific cases where predators are thought to be responsible for depredations.

H.R. 5321 provides for the "extension trapper" system which is an eminently more logical and less destructive way of control. This would enable the State wildlife agencies to assign professionally trained personnel to investigate reports of predator damage and to cope with proven cases on an individual, selective basis.

By being specific instead of general, this bill would guard against wanton depletion of species—unintentional or otherwise—by handling situations on a case-by-case basis. I feel it also is more beneficial to livestock raisers and farmers, because it pinpoints responsibility for depredations or damages. It further relieves them of any responsibility or culpability in methods by which excesses could cause great harm to both domestic and wild animals.

A key provision of this bill pertains to the so-called emergency field use of chemical toxicants. Unless we provide both the means to use this device and the protection against abuses of this device, I feel we retain a potentially dangerous method that can further deplete our diminishing species of predators.

The head of a Federal department, agency, or establishment may authorize, on lands subject to his jurisdiction, emergency use only in each specific case after he makes a written finding. This report must follow consultation with the Secretary of the Interior, the Secretary of Agriculture, the Secretary of Health, Education, and Welfare, and the Administrator of the Environmental Protection Agency.

Importantly, the bill provides that interested parties receive reasonable time to submit comments on emergency field use being considered, that an emergency exists that cannot be met by means not involving chemical toxicant use, and that such use is essential in three vital fields. These would be the protection of human health and safety, the preservation of one or more wildlife species threatened with extinction or likely to become extinct in the foreseeable future, or the prevention of substantial irretrievable damage to nationally significant natural resources.

Not only does this measure authorize the Secretary of the Interior to assist the States in controlling predator damage, but it encourages use of methods consistent with principles of wildlife management and environmental quality maintenance. The research provisions should be especially helpful to the States in providing benefits to livestock raisers and farmers as well as protecting predators.

The Secretary of the Interior also would institute a continuing inventory, in cooperation with the States, of the country's predatory and depredating animals. This would include identification of endangered or threatened species.

To enable these important activities to be carried out, the bill authorizes an appropriation of \$1.5 million for each fiscal year after fiscal 1973.

These are the salient features of proposed legislation which, I feel, represents a significant break with the archaic laws whose revision has been long overdue. These older laws, passed in a different time and in different circumstances, cannot meet the predicaments presented by our contracting natural resources.

I believe that the Department of the Interior has been making sincere efforts to carry out the spirit of the Executive order pertaining to toxic poisons. Yet, I feel the Department is hampered by antiquated statutes which are not only inadequate, but indeed are counterproductive in certain instances.

That these laws require changing and updating is evident from the public response to our past failing in the field of the environment and conservation. A new attitude abounds throughout the land and the people look to the Congress to protect and preserve our remaining gifts of Nature. The widespread concern for our vanishing wildlife species, many of them endangered, has sparked the outcry against the frivolous and broad use of poisons.

I feel that H.R. 5321 presents an effective, rational, and fair means in helping to preserve our endangered predatory and depredating animals while offering the safeguards necessary to protect livestock and crops.

Mr. DINGELL. Thank you Congressman, that was a very informative statement.

Another colleague, the gentleman from Georgia, the Honorable Ben B. Blackburn, will now give us his statement.

STATEMENT OF HON. BEN B. BLACKBURN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF GEORGIA

Mr. BLACKBURN. Mr. Chairman, I appreciate this opportunity to express my support for the provisions contained in H.R. 4758—The Endangered Species Conservation Act of 1973. The people of this Nation are very concerned that we give all due consideration to the effect our actions have upon the wildlife with whom we share this planet. Scientists who have studied the problem of vanishing wildlife point out that this problem is serious and is becoming more critical as our demands upon the environment continue to increase. Already many species have been irretrievably lost and hundreds of others are seriously threatened.

I do not think we can stand idly by and see endangered species such as the graceful southern bald eagle disappear or forever silence the cry of the Florida panther. The brown pelican and transcient Arctic peregrine falcon also grace Georgia skies with their presence. These animals afford a priceless treasure we must strive to protect.

Although the existing legislation—The Endangered Species Conservation Act of 1969—has placed this Nation in a world leadership role, that act has a number of deficiencies. It is my opinion that H.R. 4758 would cure most of those problems and enable further progress in our attempts to insure the continued existence of the world's diverse and irreplaceable wildlife.

One of the most important tools in the conservation of our native endangered species is the preservation of essential habitat. The authority to use funds from the land and water conservation fund to acquire land as provided by the 1969 act has now expired. If this authority is not reinstated, the efforts on behalf of our own endangered species will be severely crippled. The bill before the committee would reinstate that authority thereby permitting the resumption of an effective conservation program.

That bill also provides a strengthened mandate for cooperation between Federal agencies in conserving endangered species which I feel is highly desirable and consistent with my concept of good government.

The provision of authority to the Federal Government to provide protection and to prohibit the taking of endangered species should strengthen our Nation's efforts on their behalf. I note with satisfaction that a provision to delegate this responsibility back to those States who have effective programs is provided. This provision should insure that the agency best equipped to handle a given problem is able to do so and further guards against the loss of a species simply because no one is authorized to act on its behalf. I feel this provision should encourage effective Federal and State cooperation in this vital program.

The final point I wish to address is the expansion of the concept of an endangered species to include those species or subspecies which, while not presently threatened with extinction, are "likely, in the

foreseeable future to become so threatened over all or a significant portion of their range. Gentlemen, this appears to me to be the proverbial "stitch in time which saves nine." Moving to aid a species which obviously is heading down hill should give better assurances of a speedier recovery with less expenditure of resources than the present situation which requires waiting until the crisis stage is reached. Authorizing the administering agency to apply such controls as are necessary to stem the decline of these species also appears to be an improvement over the present "all or nothing" situation.

In conclusion Mr. Chairman, I am pleased to be among those who will endorse this important bill. I am looking forward to its appearance on the floor and subsequent enactment.

Thank you.

Mr. DINGELL. The subcommittee thanks you, too, that was a very well-prepared statement.

Our next witness this morning is Mr. John Grandy, appearing on behalf of the National Parks and Conservation Association.

Mr. Grandy, we are pleased to have you with us.

Identify yourself fully for the record by name and address and the organization you represent, and then we will receive your statement.

STATEMENT OF DR. JOHN GRANDY, WASHINGTON REPRESENTATIVE, NATIONAL PARKS AND CONSERVATION ASSOCIATION

Dr. GRANDY. Thank you, Mr. Chairman.

My name is John W. Grandy. I am administrative assistant for wildlife at the National Parks and Conservation Association, 1701 18th Street NW., Washington, D.C. 20009. I appreciate the invitation of the committee to testify in these hearings.

The National Parks and Conservation Association is the leading national conservation organization concerned primarily with the protection of the National Park System. We are also concerned with other major environmental subjects such as wildlife and forestry.

The NPCA is an independent, private, nonprofit membership institution, educational and scientific in character, with over 50,000 members throughout the United States and abroad, all of whom receive the monthly National Parks and Conservation Magazine; The Environmental Journal.

Mr. Chairman, it is indeed a pleasure to appear before a subcommittee that has done so much for the cause of wildlife conservation, management, and protection. Primarily, I would like to comment on the proposed bill, H.R. 37.

The United States has signed the Convention on International Trade in Endangered Species of Wild Fauna and Flora, and thus H.R. 37 is indeed timely because, with certain minor additions, it might well serve as the implementing legislation for the convention.

Mr. Chairman, your bill is highly commendable, and contains many new, positive, and beneficial provisions, particularly those that concern protection of flora and invertebrate fauna and those that extend protection to species likely to become threatened.

We feel, however, that the bill could be improved, or brought more nearly into line with the international convention, by changing some provisions. Our detailed, suggested revisions and additions will, with

your approval, be submitted within a week for your consideration; for now, the basic concepts and ideas of our proposals are presented as follows:

(1) The definition of "species" needs to be broadened. In that regard, we suggest that a species include "any species, subspecies, or substantially ecologically or reproductively isolated population segment." The reason for this is to insure the survival of esthetically and ecologically desirable populations regardless of their taxonomic status.

Taxonomy is a science—splitters and lumpers come and go and classifications vary accordingly. What all concerned people want, I believe, is to protect populations of animals or plants, regardless of varying classification systems developed by taxonomists.

Inclusion of NPCA's definition of species will also have the advantage of allowing wildlife managers to manage animals in a scientific way, by population unit. It does little good to manage an entire species consisting of, say, three distinct and different populations by one technique if the technique is not applicable to all three populations.

The excellent new concept, already contained in H.R. 37, of protecting an organism when endangered in a "significant portion of its range" is still much needed. We believe that a broadening of the definition of species, as we have suggested, will assure full implementation of the intent of the new concept.

The definition we advocate will also conform with the definition of species as contained in the International Convention.

(2) We believe that the definition of "endangered" should be stated. Presently, the definition seems to be "threatened with extinction or likely to become threatened." We submit that this definition should be clarified by adding the definition developed by the National Parks and Conservation Association:

"Endangered" shall denote the status of any species (as defined in (1) above), the ecological vitality of which is becoming threatened due to any one or combination of the following factors: commercial exploitation; loss of habitat, hunting, pollution, other adverse environmental influences. Endangered shall include "rare." Among the criteria to be considered in determining the status of an animal are the following: significant population decline, significant decrease in recruitment, significant modification of age distribution with the subject species. All species covered by this legislation shall conform to this definition.

I should point out that the word "significant" as applied to this definition means significance in a biological sense—not necessarily in a statistical sense. The reason is that animal populations may exhibit declines or inclines which are statistically significant but biologically normal.

Some may question the reasons for including rare organisms as endangered. Rare animals, by definition, are those whose density, or number per unit area, is extremely low. Such low density suggests that by decimating a few individuals, a rare species may become extirpated over a large area. Therefore, in this time of rapid environmental change, rare animals or plants are always in danger of extinction, over a substantial portion of their ranges. Thus, "rare" organisms should be classified as "endangered."

This definition, and the accompanying concept of ecological vitality, will also support the new international convention and its call for keeping endangered or threatened species at a level consistent with maintenance of their role in their particular ecosystem(s).

(3) The conditions under which the Secretary of the Interior shall grant a public hearing (pursuant to section (4) of H.R. 37) on additions (or deletions) to (or from) the list need to be more objective. In the definition of "endangered" (above), I mentioned certain criteria which should be examined in determining whether a species is endangered, for example, a significant decrease in recruitment.

Certain factors such as overexploitation of the subject species and habitat destruction are mentioned in section 4(a) of the current bill. We suggest that the Secretary of the Interior be required to grant a public hearing whenever a person can demonstrate that one of these criteria (or factors) has recently occurred, is occurring, or is likely to occur.

In addition, we recommend that the Secretary of the Interior be required to publish his reasons for granting, or not granting, such a hearing. This provision would help insure increased knowledge and involvement on the part of the public.

(4) Jurisdiction over and control of endangered species programs should rest in the Department of the Interior.

Mr. Chairman, we believe that the Department of the Interior, with its substantial expertise in endangered species, should control, with respect to fauna, endangered species and endangered species programs. This means that the Department of Commerce would not have ultimate jurisdiction over endangered ocean mammals.

In addition, however, it also means that the Department of the Interior, Bureau of Sport Fisheries and Wildlife, would have control over the rapidly multiplying endangered species programs within the U.S. Government. For instance, the Bureau of Land Management, Corps of Engineers, U.S. Forest Service, and Soil Conservation Service now have independent endangered species programs, in addition to the program of the Bureau of Sport Fisheries and Wildlife. We fear that, without overall coordination, these programs will be duplicating, and thus will waste money and other scarce resources.

We commend the eager participation by these agencies in the effort to save and restore endangered species; NPCA simply wants to insure coordinated effort so that the job is done as rapidly and effectively as possible.

(5) The definition of "take" should be expanded. The present definitions are admirable, but are directed only toward legal or illegal exploitation for commercial, sporting, or botanical purposes.

"Taking" should also be defined, for both plants and animals, as any activity which causes either directly or indirectly, harm to an endangered species. In that regard, the destruction or threatened destruction of habitat, and pollution by substances, such as pesticides, also constitute "taking" in a very real sense.

I cannot overemphasize the importance of this concept. Great numbers of Americans have demanded the preservation of endangered species, and if we are to be successful in preserving such species, we must prohibit or control all forms of "taking."

Therefore, the Secretary should be empowered to promulgate rules regarding permitted activities, including land use and chemical use, in addition to his powers governing exploitation, in cases where the well-being of an endangered species may be affected. Only if we allow

the Secretary these powers in regard to endangered species will we have a reasonable chance to preserve them.

These are the major strengthening provisions that the NPCA believes necessary. Other minor suggestions will be incorporated in our detailed revisions and additions.

Notwithstanding our suggestions, Mr. Chairman, we compliment you on the fine proposals of H.R. 37, and on your personal efforts in behalf of the environment. We specifically comment you for the proposal in H.R. 37, that the Federal Government regulate domestic endangered species. The National Parks and Conservation Association believes that the Federal Government must recognize in this manner the overriding interest of all Americans in endangered species. We believe, however, that restoration programs should be conducted co-operatively with the interested States.

Again, I thank you for the opportunity to present our views. I will be happy to work with you and your staff in developing the fine points of our proposals and in any necessary arrangements regarding the Convention on International Trade in Endangered Species of Wild Fauna and Flora.

I will be glad to try to answer any questions you may have.

Mr. DINGELL. Mr. Grandy, you have given us a very helpful and comprehensive statement which will be of considerable assistance in the committee in preparing the legislation for the floor.

Your suggestions, I must say, are well taken.

It would be appreciated if you would, at your convenience, submit to the committee specific amendatory language to carry out the points you have raised.

I might say to all witnesses that the record will remain open for a period of 10 to 14 days for that purpose, after the conclusion of the hearings. The Chair does suggest that it might be well for you to consider suggestions both as to H.R. 37, and H.R. 4758, which is the administration's bill, because we will be considering both of those, and will be seeking to achieve the best mix from the legislation.

The Chair does advise that I do not take unkindly to your suggestions at all. I think it is pretty obvious to me, no piece of legislation is ever introduced in perfect form at its first introduction.

Mr. Goodling?

Mr. GOODLING. Mr. Chairman, I have the same thoughts you have. I would suggest that Mr. Grandy and his organization also consider H.R. 4758, and maybe by a combination of the two, we will come up with an excellent version of the bill.

Thank you, Mr. Chairman.

Mr. DINGELL. Mr. Breaux?

Mr. BREAU. Thank you, Mr. Chairman, and thank you, Mr. Grandy. I think both the statement and your suggestions are excellent.

On page 3 of your statement, you suggest a change in the definition of what is considered endangered.

As I read H.R. 4758 and H.R. 37, we are setting up two different categories involving endangered species. Does your definition provide for two categories of endangered species?

Dr. GRANDY. Yes; my thought was that the two separate categories would be umbrellaed by this definition, so that they would both be contained within the definition.

It is just a setting up of the overall standards; but both of the lists, if you will, that are contained in the present H.R. 37 or H.R. 4758, would fall under this definition.

Mr. BREAUX. If we follow that suggestion, would we have to place every animal that is endangered under appendix I, or would it be possible to place species on one of the three categories included in the international treaty now under consideration by this committee?

It might be well to carry my question a bit further. If your type of definition of endangered species was adopted, it appears we would have to place every animal we have in the United States under appendix I of the treaty and would not have the choice of placing it under appendix II or III.

Dr. GRANDY. I would think that this definition would cover the treaty also.

The language in the treaty was, if my recollection is correct, either "threatened" or "may become so," and I would think that this definition would umbrella those two appendixes also.

The third appendix does not speak to endangered at all. It is simply a list of animals that we want to protect within our own border, regardless of their status.

For instance, in this country—I do not suggest this, but it is already protected—we might want to put the great blue heron on, just because we do not want them traded. That would be my idea of an appendix III species under the international convention.

Mr. BREAUX. The point I am trying to make is that this bill creates two different categories—which I think is proper—which would include endangered species. I have information from the Department which indicates that present laws and statutes allow only one category. Therefore, all animals considered endangered within the United States automatically wind up under appendix I of the treaty list.

I am wondering if your definition is flexible enough to use the two additional categories?

Dr. GRANDY. Yes, sir; in fact, the specific language that I was referring to in terms of coordinating the treaty, and our national legislation, is that language found in appendix II of the treaty which speaks to maintaining an animal at a level compatible with maintaining its role in the ecosystem in which it occurs.

The concept which I have mentioned within this definition, ecological vitality, is just my way of shortening what took them two sentences to say, and I would think that, therefore, the appendix I and II in the convention would fall under this definition also.

Mr. BREAUX. That is all I have, Mr. Chairman.

I thank you, Mr. Grandy.

Mr. DINGELL. Mr. Forsythe?

Mr. FORSYTHE. No questions.

Mr. DINGELL. Mr. Studds?

Mr. STUDDS. No questions.

Mr. DINGELL. Mr. Pritchard?

Mr. PRITCHARD. No questions.

Mr. DINGELL. Mr. Potter?

Mr. POTTER. Mr. Grandy, your arguments for including rare organisms are interesting.

I think that that is something that we will have to give careful consideration to.

To what extent do you feel that your conception of rare, that is, numerically rare members of the species is consistent with the administration's bill and H.R. 37, its definition of animals threatened with extinction within the foreseeable future unless certain steps are taken?

Dr. GRANDY. I suppose, Mr. Potter, that there is a degree of compatibility there.

My feeling is that I would like to have it spelled out rather than have to argue about it at some later time.

Mr. POTTER. It seems to me that the two concepts are similar, and we might be able to accomplish by remarks in the report essentially what you are suggesting, which is where you have a species which is numerically rare, you walk very softly before you do anything which may affect the long-term ability of those members to survive in their habitat.

Dr. GRANDY. Thank you. I am sure that would be fine.

Mr. DINGELL. You know, Mr. Potter, I really think that the language in both bills [species or subspecies of fish and wildlife that are threatened with extinction, or likely within the foreseeable future to become threatened with extinction] is not all that different. On the one hand you have endangered species, and on the other hand you have the species which would, within the foreseeable future, become endangered.

Probably a rare species would be more broad than the second part of the definition I alluded to, but I do not think it would be all that much broader, and I would like you to address yourself to that, if you please, sir.

Dr. GRANDY. Yes, sir; I agree.

I do not believe it would be a great deal broader, either.

My feeling is that rare is sort of a term that biologists, other scientists, and others use rather regularly, and it would be nice to have something in the record—I think beneficial to have it—that alluded to this, and indicated that a rare species really is likely in the foreseeable future to become threatened.

Mr. POTTER. I have another question on your point that the conditions under which a hearing would be granted should be made more explicit.

In principle, I think it is a commendable objective. I am troubled, though.

What you are suggesting is, if I could prove, or anybody could prove any of those factors listed in section 4 of the bill have occurred, or are likely to occur—that is pretty sweeping.

If I were concerned with a particular species of animals, it would be not difficult to make a credible case, for example, that existing regulatory mechanisms were inadequate, or that there are other natural or manmade factors affecting its continued existence, and what troubles me is if you put this straitjacket upon the Secretary, that he must conduct these hearings whenever you can show any of these things have happened or are likely to happen, you have created a potential for tying him up in little knots.

I am not sure that is in the best interests of the animals.

Dr. GRANDY. I agree. This just brings to light one of the problems with submitting synopsis.

I do not advocate that we take away the Secretary's discretionary

powers in this regard, because I think to avoid tying people up in little knots, the Secretary is going to have to have discretionary powers.

What I suggest is that the guidelines be fairly specific, continue to give him the discretionary power, and then simply require that he publish his reasons and findings in regard to either granting or not granting the public hearing.

I certainly do not advocate just making it "he shall in all cases when, et cetera," because I think the point you raise is valid.

Mr. POTTER. As you know, this committee is not at all averse to the concept of forcing public officials to act in a fishbowl. This is a very healthy sign, and something that is being introduced to some extent by the agencies themselves, and to a large extent is being forced on them from the outside.

It seems to me this is really where the thrust of your criticism, if that is the word, should lie, rather than in imposing a series of ironclad conditions which force him to do things which may not be wholly desirable.

Have you given any consideration to the implications of amending the bill to include endangered species of flora?

Dr. GRANDY. Well, I should point out one of the reasons, I utilized H.R. 37 as the base for my testimony was that I recognized that since it already mentioned flora, as H.R. 37 was an easier vehicle to use in terms of complementing the International Convention. I think it is a fine idea to include flora.

At this point I think we are just going to have to gear up for it in terms of the governmental structure.

Mr. POTTER. If you have any thoughts about the way that this might be or should be done it would be helpful to us.

Dr. GRANDY. Yes, sir.

Mr. POTTER. Are you suggesting that the kind of public hearing that would be required in your comments on page 5 would be a formal, adjudicatory type of hearing with a hearing examiner, cross-examination, and all the rest of it, or are you talking about the less formal rulemaking type hearing?

Dr. GRANDY. The latter.

Mr. POTTER. That will be most reassuring to the Department of the Interior.

That is all I have, Mr. Chairman.

Mr. DINGELL. Doctor, we thank you for your presence and your testimony.

Mr. Goodling, did you have a further question?

Mr. GOODLING. Yes, Mr. Chairman.

You and Mr. Potter both used the phrase "rare organisms."

Will you define just what you mean by that phrase? Give specific examples.

Dr. GRANDY. A specific example, right off the top of my head, is perhaps the grizzly bear in some parts of its range, some of the cats within parts of their range, specifically I mean an animal in general whose numbers per unit area or density is low.

Mr. GOODLING. You would not define an animal as a rare organism, would you?

Dr. GRANDY. I do not believe I understand your question, Mr. Goodling.

Mr. GOODLING. Did you not just say that an animal could be a rare organism, or words to that effect?

Dr. GRANDY. Yes, sir, I would say a rare animal is a rare organism.

I use the term "organism" to include both plants and animals, as opposed to one kingdom or the other, because the bill addresses itself to both plants and animals.

Mr. GOODLING. Well, you had me a little confused. I don't recall having heard that term used in connection with plants or animals.

I usually associate rare organism as some real small thing that would not be a plant or an animal.

Dr. GRANDY. I apologize. I am sorry to have caused confusion.

Mr. GOODLING. That is all.

Mr. DINGELL. Thank you, Mr. Goodling.

Thank you very much, Dr. Grandy, for a very good presentation.

Dr. GRANDY. Thank you.

Mr. DINGELL. Our next witness is an old friend, Mr. Louis S. Clapper, director of the conservation division for the National Wildlife Federation.

Mr. Clapper, it is always a pleasure to have you before the committee.

**STATEMENT OF LOUIS S. CLAPPER, DIRECTOR OF CONSERVATION,
NATIONAL WILDLIFE FEDERATION, WASHINGTON, D.C.**

Mr. CLAPPER. Thank you, Mr. Chairman, and good morning.

I would like to identify myself. I am Louis S. Clapper, director of conservation for the National Wildlife Federation which has headquarters at 1412 16th Street NW., here in Washington, D.C.

Ours is a nongovernmental organization which has independent affiliates in all 50 States, Guam, Puerto Rico, and the Virgin Islands.

In turn, these affiliates are made up of local groups and individuals who, when combined with associate members and other supporters of the Federation, number an estimated 3.5 million persons.

We welcome and appreciate the opportunity to comment on these bills which would "provide for the conservation, protection, and propagation of species or subspecies of fish and wildlife that are threatened with extinction, or likely within the foreseeable future to become threatened with extinction, and for other purposes."

Mr. Chairman, delegates to our 37th annual meeting met here March 15-18, 1973, and adopted a resolution which sets out our latest policy on endangered species of wildlife.

In this resolution, we recognize that many species of fish and wildlife are endangered and/or are threatened with extinction. We express the belief that these species merit suitable protection and management under sound recovery plans. And we feel that cooperative joint Federal-State efforts are needed to insure the most effective effort to manage endangered species.

The Federation then urged the adoption of these principles:

"1. That agencies of the Federal Government be required to cooperate fully with State wildlife agencies in any program to manage endangered species under Federal stewardship;

"2. That the State agencies be given an appropriate opportunity to prepare and manage recovery plans, and retain jurisdiction over resi-

dent species. And such authority shall remain with the States until such time that the State regulatory agency declares its inability or unwillingness to fulfill the necessary obligations;

"3. That the States continue to exercise the prime responsibility for managing resident species, including those classified as rare, endangered or threatened with endangerment;

"4. That all agencies of the Federal Government be required to work to the closest degree possible with State wildlife agencies in the development of lists of endangered and threatened domestic species. And that mutual agreement (State-Federal) be obtained for resident species before specific classification is established."

And to these probably should be added a requirement that the Federal Government provide significant and meaningful financial help to the States in these cooperative efforts.

In fact, we feel that endangered species of wildlife are of sufficient importance for economic, scientific, educational, and recreational purposes to the Nation that they merit protection by programs financed with general fund moneys at both Federal and State levels.

We also would hope that any bill reported by this committee will lay additional stress upon the need for habitat improvement.

And, so, Mr. Chairman, we support the broad principles expressed in H.R. 37 and H.R. 4758, the "Endangered Species Conservation Act of 1973," and the other proposals with similar objectives, as we have supported the preservation and protection of endangered species in the past.

However, we hope any bill reported by this committee can reflect the approaches enumerated in our resolution and expressed earlier in this statement.

We would now like to comment on the specific proposals.

H.R. 4758:

Subsections 2 (a) and (b) of H.R. 4758 express the same findings and purposes as the same provisions in H.R. 37 and identical bills. However, in line with objectives stated above, we recommend that section 2(c) (1) of H.R. 4758 be amended to insert the words "and agreement" before the phrase ". . . with the affected States," thereby bringing these units of government into the determinations on what species or subspecies shall be regarded as endangered.

In similar vein, we recommend that the words "and the appropriate State agencies" follow "in the judgment of the Secretary" later in that same subsection. And, in section 2(c) (2), the first phrase should be amended to read: "after making such determination" then adding "in cooperation with State wildlife agencies * * *." State wildlife agencies should be made integral parts of the determination process in similar fashions in the companion provisions, section 4, in H.R. 37.

Definitions in section 2(d) essentially are the same as section 3 in H.R. 37, although we see merit in combining "fish and wildlife" as outlined in H.R. 4758.

Section 3(a) should be amended in this manner "* * * that he lists, after cooperating to the closest degree possible with appropriate State wildlife agency authorities as endangered species * * *"

Section 3(c) authorizes funds for the acquisition of lands and waters to conserve endangered species. However, if the administration continues to impound and/or divert moneys from the dedicated land

and water conservation fund this season, despite its desirability, will have little or no meaning.

Section 4(b) of H.R. 4758 authorizes the Secretaries to issue regulations to protect and preserve endangered species. Again, either the State wildlife agencies must be made integral parts of the decision-making process outlined here, or this provision must be limited to those species which are migratory and fall under the true jurisdiction of the Federal Government.

Section 4(e) allows the States to have more restrictive laws than those imposed by the Federal Government, and we are in agreement with this principle. Essentially the same provision is found in section 6(e) of H.R. 37.

Section 5(c) of H.R. 4758 allows for Federal-State cooperation in a manner similar to section 6 in H.R. 37. In our opinion, both proposals are deficient in that they virtually preempt State authorities. In these proposals, only the Secretary makes the determination when a State has a satisfactory program. Again, we ask that these determinations be made jointly. H.R. 4758 makes no differentiation between "resident" and "migratory" species while H.R. 37 does make this distinction.

We particularly like the provision in section 6(a) (3) which would void livestock grazing permits for persons convicted of a criminal violation of this act. We have recommended that the Secretary of the Interior refuse grazing permits to persons convicted of wholesale killings of eagles, and thus far have been refused. As a result, we would recommend that the bill be amended to insert stronger language following "hereunder," reading: "shall immediately modify, suspend, or revoke * * *"

We agree with the principles expressed in section 7 of H.R. 4758 (and section 10 of H.R. 37), believing all encouragement possible should be extended to other nations to protect endangered species worldwide.

We hope that we can soon devote some space in our magazine to the recent International Conference which we think was concluded on a very successful note.

I would also commend the chairman of this subcommittee for his continued interest in leadership in the wildlife field.

Section 8 of H.R. 4758 directs that the Secretaries cooperate with the States. However, again, this cooperation leaves determination of "to the maximum practicable" up to the definitions of the Secretaries. Agreements should be mandatory on resident species.

Many of the amendments to safeguard State prerogatives and responsibilities could be applied to H.R. 37 as well. Consequently, we will not go into the same detail, beyond making that observation.

However, since it appears that prime consideration is being given at this time to fish and wildlife, as defined in both bills, there appears to be little reason for the references in H.R. 37 to flora section 3(6) (b) and section 11.

In conclusion, Mr. Chairman, we also feel that both of these bills are deficient in that there are no provisions for Federal cost-sharing of these programs. Without added funds to finance the added responsibilities, on both State and Federal levels, law enforcement and administrative staffs already far too small will be stretched even farther.

Thank you for the opportunity of making these observations.

Mr. DINGELL. Mr. Clapper, the committee thanks you for your very helpful testimony.

Mr. Breaux?

Mr. BREAUX. Thank you, Mr. Chairman.

Mr. Clapper, I would like to thank you for the statement. I find I am in agreement with a great deal of it.

You point out specifically that section 5(c) of H.R. 4758 allows for Federal-State cooperation in a manner similar to section 6 in H.R. 37.

As I read the committee's bill and the administration's bill this does allow the States to manage and run the program if it is determined that the States have a sufficient and efficient local program that can carry out these purposes of the act.

Do you feel that this is sufficient language?

Mr. CLAPPER. We are in agreement with the principle, but many of our members are disturbed about who would make that decision on whether or not the State program is sufficient and adequate, and we think that this again should be a joint effort in an agreement with the State. We do not want to just give the Secretaries the authority to decide on their own whether or not the States have an adequate program.

Mr. BREAUX. You've mentioned in your statement that you prefer having the agreement of the State before an animal is placed on the endangered species list. Would this not give each of the 50 States an absolute veto of an animal being placed on the endangered species list?

Mr. CLAPPER. We do not think "absolute veto" is quite the word, but again we feel that the State's expertise in this area is very fine, very high. It should be a joint decision.

I think Secretary Reed indicated this, too, in his statement, and it is my belief that it would be doubtful that disagreements would really occur on very many species. But we do not want the States to be completely ruled out of the picture on this.

Mr. BREAUX. Then you think the word, consultation, as it applies to the States, is insufficient in considering the animals to be placed on the endangered species list?

Mr. CLAPPER. We certainly hope it could be improved. We hope "agreement" could be added as well as "consultation."

Mr. BREAUX. Thank you.

Mr. DINGELL. Mr. Goodling?

Mr. GOODLING. Thank you, Mr. Chairman.

Mr. Clapper, you say you feel that both of these bills are deficient in that there are no provisions for Federal cost sharing of these programs.

You go on to say without added funds to finance the added responsibilities, on both the State and Federal levels, law enforcement and administrative staffs already far too small will be stretched even farther.

I would like to report that in my Commonwealth of Pennsylvania no general fund money goes into our fish and wildlife programs. They are all financed by the sportsmen themselves. That I consider the desirable way of doing it.

Mr. CLAPPER. I worked for a State wildlife agency for nearly 10

years, and I am well aware of this, and I think it is a distinct problem.

I do not want to disagree with you, except we think there are some species that merit additional money from tax revenues. Tax revenues could help cover nongame species, and particularly some that normally are not given the attention that would be given to a game species.

This is the problem, and some of the States are endeavoring to meet this, Mr. Goodling.

I think the State of Washington has just passed a new act which would allow nameplates on licenses to be used, with the money dedicated for this kind of purpose.

The conservation effort in Missouri only recently mounted a big campaign on, which did not get to a referendum, but did try to eradicate additional moneys from a tax on soft drinks to this kind of thing.

This is what we had in mind, but we also think it merits some Federal funds above and beyond what has already been appropriated, too.

Mr. GOODLING. Well, I believe both of my agencies, and you are probably familiar with them, are doing a reasonably good job.

Mr. CLAPPER. Outstanding.

Pennsylvania, in the field of wildlife management, has long been a leader, particularly in deer management.

Mr. GOODLING. Thank you, Mr. Chairman. That is all that I have.

Mr. DINGELL. Mr. Studds?

Mr. STUDDS. Thank you, Mr. Chairman.

Mr. Clapper, I am just somewhat curious. I am a neophyte in this field, and I am curious about the theme that runs through your testimony of constant concern of the legislation's granting, or the possibility of the legislation's granting, insufficient authority to the States.

It seems to me that your answer to Congressman Breaux has to be "Yes" to his question, and are you not suggesting really a veto in the hands of each of the States on this by the wording you have suggested?

Mr. CLAPPER. Well, I hate to say "veto," but this probably is what it would amount to. I think the professionals in this field can usually work out these problems together. I do not think necessarily "veto" would be the word, but there are cases perhaps where this will occur, where the differences will be so great that the States would be in disagreement with the Federal Government, and for this reason we do not think necessarily that the Federal Government should have the preemptory authority.

Mr. STUDDS. I guess what I am interested in is whether your theme stems from a philosophical point of view, namely, that States ought to, in general, have this kind of authority, or whether you perceive general substantive disagreements ahead.

Mr. CLAPPER. I hope the chairman will agree with me on the description of the difficulty that I will try to describe, Congressman.

The authority of the State wildlife agencies in jurisdictional matters over fish and wildlife has long been a sore point between many people in the wildlife field.

State governments feel that they have been given constitutional rights to manage resident species of fish and wildlife.

There are others who feel that the Federal Government perhaps

should get into this even more and more, and there is a real conflict of jurisdiction over resident species of wildlife.

Now, no one disagrees that migratory species of wildlife rightfully belong in the Federal area, but the jurisdiction over resident species long has been a matter of concern that goes back perhaps 40 years to the effort at one time of the Forest Service to manage resident species of wildlife in National Forests. And a national park case in New Mexico got into the courts.

There have been agreements between the Secretaries of the Interior and the State wildlife agencies on Federal-State jurisdiction, and this, I think, is a major underlying problem behind what you are describing, and what Mr. Breaux is describing.

The States want to maintain their own responsibilities and prerogatives.

Now, in my opinion, personally, as one who has worked on the the Federal level, I mean with the Federal agencies for 14 years, and worked with the States for 9 years, this has to be a joint approach.

The Federal Government simply cannot, with its manpower limitations, take on added responsibilities without the full cooperation of the States.

If my memory is correct, the Bureau of Sport Fisheries and Wildlife, for example, has in the neighborhood of 150 to 160 law enforcement people to cover the whole country.

The one State that I formerly worked in before I came to Washington, the State of Tennessee, which is a small State, has 140 law enforcement officers for that one State alone.

So you see, if a really effective program to conserve endangered species of wildlife is going to succeed, it has to be a Federal-State joint effort, in my opinion.

Mr. STUDDS. I appreciate that.

By resident species, you mean an animal who happens to be solely a citizen of North Dakota, or confined within the boundaries of that State, is that right?

Mr. CLAPPER. Yes; those that normally do not move between States. Deer, and most mammals, would come under this category.

There are some sea mammals that would be the exception.

Mr. STUDDS. Thank you. I appreciate your elaboration on that.

Mr. CLAPPER. I am aware of the alligator situation in Louisiana, where the State has a surplus.

Mr. STUDDS. Your statement on the bottom of page 3 says if the administration continues to impound and/or divert moneys from the dedicated land and water conservation fund, this section, despite its desirability, will have little or no meaning.

You can imagine how many phrases we can insert there in lieu of land and water conservation fund. That is sort of a plaintive cry you have there. I hope you take your 3½ million members and make that point to the administration.

Mr. CLAPPER. We have endeavored to meet with the Office of Management and Budget to express our dismay at some of these impoundments.

Mr. STUDDS. Did you meet with them?

Mr. CLAPPER. We had 1 hour.

Mr. STUDDS. Was it real people that work up there?

Mr. CLAPPER. They are at the third level, and we had some very definite answers, I thought. This was relating particularly to the Forest Service budgets, but we were told that the administration will continue its efforts to hold the line on employment of people, and that the Forest Service will be asked to reduce its manpower by 1,600 people by July 1, 1974.

It is difficult for us to understand how the Forest Service can be given additional responsibilities without additional funding, or at least equal funding. These are problems that perhaps do not relate to this bill.

Mr. STUDDS. I think you could perform a great public service if each of your $3\frac{1}{2}$ million delegates would send a small copy of the Constitution up there.

Thank you, Mr. Chairman.

Mr. DINGELL. Mr. Forsythe?

Mr. FORSYTHE. No questions.

Mr. DINGELL. Mr. Mills?

Mr. MILLS. No questions.

Mr. DINGELL. Mr. Pritchard?

Mr. PRITCHARD. No questions.

Mr. DINGELL. Mr. Potter?

Mr. POTTER. No questions.

Mr. DINGELL. We thank you, Mr. Clapper. We enjoyed having you before the committee again.

Our next witness is Mr. Tom Garrett, Friends of the Earth, Wildlife Director.

It is always a pleasure to have you before this committee again, Tom.

STATEMENT OF TOM GARRETT, WILDLIFE DIRECTOR, FRIENDS OF THE EARTH, WASHINGTON, D.C.

Mr. GARRETT. Thank you, Mr. Dingell. Thank you for this opportunity to testify.

I am testifying today on behalf of the 27,000 U.S. members of Friends of the Earth, and the 26,000 members of the Animal Protection Institute of America.

Friends of the Earth is a national organization, with sister organizations in 11 foreign countries, dedicated to the preservation and rational use of the environment. Our Washington, D.C., office is at 620 C Street SE. The Animal Protection Institute is a national organization committed to the welfare of domestic and wild animals, and to the preservation of wildlife habitat.

Friends of the Earth and API strongly endorse the basic features of H.R. 37 and H.R. 4758. These bills remedy a salient defect for protecting domestic endangered species. They have also eschewed the egregious concept of "worldwide extinction," which further crippled the 1969 act.

Of the major bills now under consideration, H.R. 37 is generally superior. It embodies many of the suggestions made by conservationists before the House committee last year. We commend and thank Mr. Dingell for his initiative in developing this improved bill. With the exception of parts of section 6, particularly paragraph (c) to

which we are opposed, and urge this committee to delete, we endorse the changes written into H.R. 37.

We are pleased at the inclusion of plants within this protection. Aside from the intrinsic worth of given plants, the survival of animal species is frequently contingent upon their availability. For example, the saguaro cactus is now threatened in the United States. If the saguaro disappears, the survival of the elf owl becomes problematical. Other living forms directly or indirectly dependent on the saguaro will disappear.

We particularly welcome the emphasis on land acquisition in the bills before this committee. It should be obvious to any of us that if we do not preserve the habitat of species, and the integrity of biotic communities, whether or not plants or animals are protected from deliberate molestation becomes, eventually, academic.

If the Congress is genuinely serious in its determination to protect hard-pressed species, it must not only provide authority to purchase lands, but provide ample appropriations. The agencies involved in purchasing must move promptly to insure the habitat now, before vested commercial interests, or competing State or Federal agencies, have staked a claim.

We are also delighted with section 6(e) guaranteeing the States the privilege of enacting and enforcing stronger legislation, and with the much needed section placing rather onerous recordkeeping burdens on importers.

We are delighted with section 5(e) of H.R. 37, permitting funding of projects on behalf of endangered species abroad, under the Agriculture Trade, Development, and Assistance Act. This is an extremely valuable and commendable initiative which we certainly hope will appear in the final version reported out by the committee.

We strongly endorse section 6, paragraph (3), of the administration's bill, permitting the rescinding of grazing permits or hunting licenses by the Secretary, in response to molestation of endangered species. We would like to suggest that this section be expanded to authorize cancellation of other types of Federal leases and use permits, when it can be shown that activities conducted by firms holding such leases and permits are in violation of the act.

Mr. Chairman, while we find a great deal to praise in the bills before you, we find some common deficiencies.

1. The definition of "take" is inadequate. An animal or plant is just as dead if it is killed by some concomitant of "progress" such as industrial poisoning, suburban or recreational development, inundation, or desiccation, as though it were deliberately shot. In a sense, it is perhaps "deader," since associated living components of its local habitat will also have been affected, and the opportunity for its kind to reestablish itself in the place may be irrevocably lost. This legislation will be immeasurably strengthened by explicitly broadening the definition of "take" to include all forms of molestation, whether deliberate or incidental to commercial, recreational, or other activities.

2. A citizens' suit provision should be added. This will greatly stimulate proper enforcement, and strengthen the act.

3. We are pleased with section 7(d), permitting the listing of non-endangered species which are indistinguishable from endangered species. However, we wonder if section 4 provides enough protection

to certain isolated population stocks of major species, which may be gravely endangered although the species generally is not in severe difficulty. The problem of transshipment smuggling will probably be greatly ameliorated when the International Convention on Trade in Certain Species of Wildlife, recently signed in Washington by over 80 nations goes into effect. Nonetheless, we feel that evidence that a major population stock has become depleted should result in the listing of the species.

Under the 1969 act, efforts to achieve listing of an animal have often been frustrated by assertions that the status of an animal was "unknown." If the status of an animal is unknown, this may be taken as *prima facie* evidence of its rarity. The safe course is to list the animal, with the burden of proof regarding its status thereafter resting with those who may wish to take the animal, or remove it from the list. We hope that language to this effect will be specifically included in the legislation. We also feel that "rare" animals, regardless of current or previous exploitation, should qualify for listing.

4. We have reservations over section 8 of H.R. 37. We would be much more comfortable if language were included making it clear that no endangered species would be used in medical research, or in any other research not expressly designed to benefit the species itself. The only possible justification for killing an endangered species for "scientific" purposes, would be to examine it for disease, or to secure controls in the monitoring of pollutant concentrations. We must guard against the sanctioning of the sort of "special scientific permits" issued by the International Whaling Commission for the killing, and of course, commercial processing, of ostensibly protected whales.

We are adamantly opposed to language which can be construed as allowing the automatic granting of 1-year economic hardship permits, as occurred under the 1969 act. We request language in section 8(b) which makes the issuance of such a hardship permit contingent upon the findings of a public hearing, and which permits the Secretary discretion to set a "phaseout" quota only if it can be demonstrated that such a quota will not have a deleterious effect on the species or stocks being listed.

A commercial operation based on products taken from endangered species is obviously quite deliberately self-effacing. The willingness of certain people to take short-term profit through trafficking in such endangered and vanishing species is a major factor in their disappearances. Why is it necessary to defer to such irresponsible behavior?

5. We oppose the granting of jurisdiction over endangered species to the Department of Commerce. The Bureau of Sport Fisheries and Wildlife has shown an increased sensitivity to the need to protect and conserve wildlife. While we have no extremely strong objections for the transferral of responsibility of commercially exploitable fish to NOAA, we feel very strongly that marine mammals should remain under Interior jurisdiction in this legislation. The fact that NOAA has jurisdiction for most marine mammals under the Marine Mammal Protection Act makes it all the more important that the listing of the animals under this act be in the hands of Interior. This provides a kind of "fail safe" mechanism, in which inadequate administration by one agency can be corrected by proper administration by the other.

We have a high regard for Dr. White, Mr. Wallace, Dr. Aron, and

other NOAA officials. We find them efficient, helpful, and well-meaning. But we do feel that the possibility that commercial pressures will affect administration in this area is inherently greater within the Department of Commerce than within the Department of Interior. We have not forgotten that the Commerce Department's proposed amendments to the marine mammal bill would virtually have destroyed the legislation. A hardship permit granted Sea World International this month by Phillip Roedell, without a hearing and apparently without consulting NMFS officials in Washington, has already aroused the ire of Senator Magnuson, and various scientists and conservationists.

(6) While we understand that State policies are often more enlightened than Federal policies, we fear that (a) and (b) of section 6 might jeopardize, rather than enhance, the setting aside of sanctuaries under this legislation. Many State wildlife commissions have become, in effect, commercial bureaucracies, which are far more interested in selling hunting licenses than in perpetuating endangered species, and would be loathe to remove habitat areas from their jurisdiction. An example which immediately comes to mind is the hostility of the California Game and Fish Commission to the Owens Valley elk sanctuary. Paragraph (c) is an invitation to major abuse and we wish to repeat our resolute opposition.

(7) The signing of the International Convention on Trade in Certain Species would appear to necessitate a section designed to integrate this legislation with the convention. Such a section, in my view, should include language which requires the Secretary to list animals appearing on the appendices to the convention, and which instructs the Secretary of State to propose an amendment through the procedure specified in article XV of the convention, in order to attempt to add to the appendices animals on our endangered species lists which do not appear in the appendices.

(8) The Endangered Species Act of 1969 included a section instructing the Secretary of State to negotiate a meeting designed to limit international trade in endangered animals. This outstanding provision bore fruit with the recently concluded international conference. We would like to suggest that section 5(f) of this legislation contain language instructing the State Department to attempt to convene another international conference, this one aiming at measures to preserve the habitat of endangered species.

In closing, Mr. Chairman, I would like to emphasize again that it is ultimately immaterial whether or not an animal is deliberately molested if its habitat is not preserved. Habitat acquisition must be a major goal in this legislation. At the same time the complete inadequacy of the traditional definition of "take" for the year 1973 must be acknowledged. "Take" must be broadened to include habitat degradation.

We appear caught up today in a metastacizing biological disaster. The precipitous decline of our fellow living creatures throughout the planet mirrors our own chance of avoiding a prodigious calamity. If we cannot contain the proliferation of our own kind, if we will not restrain our nihilistic and randomly destructive technology, the animals which we are here striving to save will not survive, and our own "harvest" will surely be at hand.

Thank you again for this opportunity to testify. We shall submit

specific proposals for amendments, and in support of points which we have raised.

Mr. DINGELL. The committee thanks you for a very helpful statement.

Mr. Forsythe, any questions?

Mr. FORSYTHE. No questions.

Mr. DINGELL. Mr. Breaux?

Mr. BREAU. Thank you, Mr. Chairman.

And thank you, Mr. Garrett, for your very helpful testimony. I think you are the first person to object in testimony before this committee to section 6 of the bills being considered. Specifically, I would like to know whether or not you disagree with the concept of cooperation between the Department of the Interior and the States?

Mr. GARRETT. Obviously, sir, cooperation is necessary, but I am very wary of provisions which may permit some State agencies to put the brakes on listing of certain species, or the acquisition of habitat.

Mr. BREAU. Very interesting. I'd like to know what conceivable way under these bills that the States would have the right to override the Department.

Mr. GARRETT. Maybe my objection is badly founded, but I certainly hope that there is every safeguard against this because I have no doubt that some State agencies will, in fact, do this.

Mr. BREAU. Will do what?

Mr. GARRETT. If they have an opportunity to do so, will object to the listing of some domestic species as endangered, or attempt to impede the setting aside of preserves. Many State agencies will be against any emphasis on other than target animals.

Mr. BREAU. You point out on page 4 that many State wildlife commissions have become, in effect, commercial bureaucracies. If we admit that some have, what about the ones that have not?

What about the ones that have made every effort to bring about sound game management? Are we not penalizing them for those that are not up to par?

Mr. GARRETT. I do not know. I would say at least one-third of the State agencies have become commercial bureaucracies solely interested in selling hunting licenses. Some are exemplary and are ahead of the Federal Government in game management.

Mr. BREAU. That is a very strong statement. I would like to know what led you to believe that the States do not have sound game management practices.

In your opinion, is Louisiana on that list?

Mr. GARRETT. I do not know much about the State of Louisiana, sir. I am from Wyoming.

Mr. BREAU. That is a very good point, the fact that you do not know very much about the State of Louisiana's program and that you think it is improper for the Department to consult with the States, particularly on resident wildlife.

Mr. GARRETT. I do not think that I said that it is improper for them to consult. I want to make sure that the bill does not include language which would permit the States to hold up listing or habitat acquisition. Consultation is one thing, but holding up the listing and affecting management is something else again.

Mr. BREAUX. Look at the bill from the opposite side. Does it not provide the Department of the Interior with an absolute veto of any findings a State sends to Washington?

Mr. GARRETT. Does it? I wonder about that. Last year, Senator Spong introduced a bill similar to Mr. Dingell's bill and the International Association spokesman said, in his view, that it did not.

Mr. BREAUX. The language I am referring to says the Secretary shall determine what is an endangered species in consultation with the State.

As I read the language, if he does not agree with the State's findings, he has the absolute right to list an animal that they do not consider endangered. Do you agree with that?

Mr. GARRETT. That is reasonable.

Am I correct, then, in assuming that in this provision the States cannot affect the listing of an endangered animal? You are saying this consultation will have no effect on the Secretary's decision?

Mr. BREAUX. I am saying if he disagrees with the State's findings, under the bill he can list or not list a species. The final determination is within the discretion of the Secretary of the Interior.

Mr. GARRETT. This section continues to worry me because the International Association is very strong, and States are able to put on a lot of pressure.

Mr. BREAUX. It worries me, too, because I do not think the States have been consulted enough.

What do you envision the role of these 50 States will be in the management of this program?

Mr. GARRETT. Obviously, you cannot enforce the program unless the States have a part in the enforcement. That was Mr. Clapper's point, and is very well taken. That is apparent to anyone. There will have to be some kind of agreement between the States and the Federal Government on enforcement. For example, in Texas the remnant population of the red wolf is on primarily private land. Obviously, the State of Texas will have to play an important role if the red wolf is to be retained.

The same thing is true in the State of Utah with the Utah prairie dog, which is practically gone.

Clearly, the States will have to play a role. The Federal Government has no jurisdiction in cases such as those just cited because they persist on other than Federal lands.

Mr. BREAUX. Do you not agree with the statement that economics is a good incentive for sound game management practices?

Mr. GARRETT. It all depends. Going back to the State of Wyoming, there is a bitter joke going around in the last few years, that the State game and fish commission would continue to sell hunting licenses to out-of-Staters after the last mule deer were gone from the State. The State failed to take into account severe winter losses, and has continued to sell a set number of licenses. Apparently the biologists down below are under pressure to generate revenue from the political appointees above; and, as a result, deer numbers in southwestern Wyoming are back down to where they were in the 1930's.

I have heard reports elsewhere in the West that are fairly similar to that.

Mr. BREAUX. Last question, Mr. Chairman.

What about the States that do have sound management practices? Should they not be allowed to continue such a program?

Mr. GARRETT. Obviously. The State of Washington is now objecting to a permit which has been issued by the Department of Commerce under the Marine Mammal Act for the taking of killer whales in the territorial waters of the State of Washington.

I am really very pleased with this move by Governor Evans. I said I was delighted with the section that guaranteed the States the privilege of having stronger legislation and stronger protective statutes on the books.

Mr. BREAUX. Thank you.

Mr. DINGELL. Mr. Forsythe?

Mr. FORSYTHE. No questions.

Mr. DINGELL. Mr. Mills?

Mr. MILLS. Thank you, Mr. Chairman. I have no questions.

Mr. DINGELL. Mr. Studds?

Mr. STUDDS. Thank you, Mr. Chairman.

I appreciate the strength of your statement, Mr. Garrett. I was particularly interested in the next-to-last paragraph. I think that should be set to music—metastasizing biological disaster.

What is metastasizing?

Mr. GARRETT. That is a medical term. In terminal cancer, for example, when the cells begin to proliferate throughout the organism that is when they are metastasizing.

Mr. STUDDS. Thank you.

Mr. DINGELL. Mr. Potter?

Mr. POTTER. On page 2 of your statement, Mr. Garrett, you indicate that you think a citizen's suit provision should be added. To do what? I am not, as you well know, unsympathetic with the concept. I am not sure how it would fit in.

Mr. GARRETT. Mr. Potter, there are a lot of people interested in endangered species who live in the areas where endangered species persist who know what is going on, and who would be likely to observe some kind of infringement.

I think that a lot of the objections that people are raising on enforcement could be met, and a lot of the slack could be taken up by the citizen's suit provision.

Now, this committee put a citizen's suit provision of a type in the Marine Mammal Act and I think that will make the act a lot more enforceable than it otherwise would be.

I would be partial, if you can do it to the kind of qui tam provision that occurred in the 1899 Refuse Act.

I do not think you can put a qui tam provision applying to criminal penalties but to civil.

Mr. POTTER. It is the other way around.

Mr. GARRETT. Oh, it is?

Mr. POTTER. That is what we did in the Marine Mammal Act. We said anybody who, in fact, blew the whistle on the violator would be entitled to receive up to \$2,500 in criminal fines.

Mr. GARRETT. That is what I have in mind here. For example, in Texas some ranchers may be shooting or trapping the red wolves. No one would have the slightest idea what is going on, but some chap working on the ranch would know all about it. If he had the proper incentive, he would blow the whistle.

Enforcement is a terribly difficult problem, especially in a place like Alaska or again in Louisiana, and this permits the citizen to participate. And, after all, there has been a tremendous amount of citizen pressure to protect these species. It gives the citizen a chance to participate.

I think this is a good practical thing to do.

Mr. POTTER. You make a very strong case. You suggest on page 2 that the section in the administration's bill not requiring but authorizing the suspension of grazing leases might be expanded to cover other types of Federal leases, and use permits.

For example, what?

Mr. GARRETT. Could this not be applied on forest service lands, where it was shown that timbering practices were having an extremely adverse effect on some protected species, and then again we have mining leases, and that sort of thing.

Mr. DINGELL. Mining leases are not really a lease. A mining lease is really under the mining laws of this country. We actually give fee ownership to the land and, remember, we had some big fights over the amount of land that they got. It was literally a raid on the public domain. That is something that still has to be straightened out by the Congress.

Mr. GARRETT. Well, that was a suggestion I tossed out when I wrote the testimony at the last minute. But surely there are other leases and use permits which might be affected.

Mr. DINGELL. Mr. Garrett, you have made a number of suggestions. Would you submit appropriate amendatory language to the two bills?

Mr. GARRETT. Yes; I will. I will go see our legal consultant and get the language properly set up.

Mr. POTTER. Mr. Chairman, you have once again taken the words out of my mouth.

Mr. Garrett, you say you have reservations about the language in section 8, having to do with exceptions for scientific purposes.

As I read section 8(a) I do not see any real inconsistency with H.R. 37. I do not see any real inconsistency with what you propose, and what that section reads; so I will be particularly interested in any specific language changes you have to make in section 8 to make it more explicit.

Mr. GARRETT. I shall submit those, Mr. Potter. I may be barking at phantoms, as the gentleman from Louisiana has suggested, but I will at least provide amendatory suggestions.

Mr. POTTER. That is all I have.

Mr. DINGELL. Mr. Garrett, you suggested in your statement that we should change the definition of "taking".

Mr. GARRETT. Yes, sir.

Mr. DINGELL. I am sympathetic with your goal of preserving the species from not only the actual, direct taking, but also from habitat change.

I wonder if it would not better serve to protect habitat and matters of that sort as what they, in fact, have as other matters that affect the well-being of the species and so to leave the term "taking" as it is with perhaps some additional language relating to other matters.

What are your comments or thoughts on that?

Mr. GARRETT. Well, one thing that is certainly disturbing is our recreational excesses which cause mortality and even endanger animals.

One case that comes immediately to mind is the situation in Florida where speedboats frequently hit the manatees. The same thing is occurring with the southern sea otter.

Mr. DINGELL. And backpackers working over the mountain sheep.

Mr. GARRETT. Yes, sir. This bill is, in fact, a very good vehicle to employ to broaden this definition. You might be able to get a strong definition in here and then use the bill effectively, whereas a separate legislation which was designed to halt industrial expansion and so on from destroying habitat might be a lot more difficult to pass.

Mr. DINGELL. The problem troubles me, and to reach a solution is another matter.

Mr. Steele, any questions?

Mr. STEELE. No questions, Mr. Chairman. Thank you.

Mr. DINGELL. Mr. Garrett, we thank you for your very helpful testimony.

Our next witnesses to appear are Mr. Steve Seater, director of public relations, and Mr. Harold Watling, both from the Defenders of Wildlife.

STATEMENT OF STEPHEN R. SEATER, DIRECTOR OF PUBLIC RELATIONS, DEFENDERS OF WILDLIFE, ACCOMPANIED BY HAROLD WATLING

Mr. SEATER. Mr. Chairman and members of the committee, I appreciate very much your invitation and the opportunity to testify today. I am Stephen R. Seater, representing Defenders of Wildlife, a nonprofit organization of approximately 39,000 members dedicated to the preservation of our wildlife heritage.

Since 1600, approximately 120 forms of mammals and 150 of birds have become extinct owing to human folly and thoughtlessness. Moreover, this rapid disappearance has been gaining momentum: During the last century an average of one species has vanished each year. Today, over 900 species of animals and some 20,000 plants are threatened with extinction.

While deliberate slaughter by man is certainly one of the major reasons for the eradication of animal species, it is the destruction of natural habitats that has taken the greatest toll. Wild animals and plants have evolved in constant interaction with their habitat or biotope and as a result are inextricably tied to it. Pollution, deforestation, agricultural and pastoral expansion, and the drainage of wetlands have all contributed to the degradation or complete destruction of biotopes.

Man's demographic and technological expansion is the cause of many profound environmental changes which, in turn, have produced a lessening of diversity within the biosphere. Many outstanding biologists, including Charles Darwin, have emphasized the need to preserve the maximum diversity in nature. They contend that man is best off when he is able to experience the widest possible range of experiences in the natural world.

Indeed, numerous observations by scientists have demonstrated that people experience great sensory pleasure when visiting large cities,

zoos, and art galleries. This suggests that man has an appetite for environments characterized by considerable variety. According to systems ecologist Kenneth E. F. Watt: "A host of anecdotal observations suggest that optimal diversity for the human nervous system is higher than the average environmental diversity in which most of us typically live." By extirpating one species after another, man continues to lessen the diversity of living things and further impoverishes his world.

In conserving rare and endangered animals and plants, more is at stake than preserving this or that species or a particular wilderness area. Man's attitude toward the biosphere is a barometer by which we can measure his resolve to deal with fundamental problems affecting his own survival.

Defenders of Wildlife supports H.R. 37, the "Endangered Species Conservation Act of 1973." In our considered opinion, this is the best of the endangered species bills now before the Congress. Moreover, we believe it to be a vast improvement over the 1969 Endangered Species Conservation Act because it rejects the concept of worldwide extinction. This egregious notion has been a stumbling block to the listing of numerous species which have undergone a precipitous decline or have even been extirpated in various parts of their range, but which are not technically endangered on a worldwide basis.

If possible, we would prefer that jurisdiction relating to fish and wildlife be vested entirely in the Office of the Secretary of the Interior. Generally speaking, we feel that this Department is less likely to succumb to commercial pressure than is the Department of Commerce.

Furthermore, within Interior, the Office of Endangered Species has taken the initiative and proposed the listing of numerous foreign and native endangered species.

By making a radical departure from its past performance, the Office of Endangered Species is now, for the first time, in a position of leadership in this sphere of conservation. Moreover, specialists within the office are hard at work formulating recovery plans for native endangered species. We, therefore, think it appropriate that Interior rather than Commerce should be responsible for all endangered wildlife.

Defenders would also like to suggest that a definition of wildlife be included in the bill which goes beyond species and subspecies. We believe that H.R. 37 could be improved by including in the definition, any race or variety whether geographical or ecological in nature, or any reproductively isolated segment. This would have the effect of protecting isolated and unusual populations regardless of their taxonomic status. Examples would be the black bear in the Great Dismal Swamp of Virginia and the jaguarundi found in the Rio Grande brushlands of Texas.

We would also like to see the term "take" broadened to include any degradation or disturbance of the biotope in which endangered species reside. It is imperative that such things as dam and road building; the draining of marshes; channelization of streams; deforestation and the encroachment of agriculture be prohibited when it can be shown that they will have an untoward effect on biotopes in which endangered plants and animals are found.

Consider the endangered muhlenberg turtle found in certain Eastern States. To prohibit the trade and possession of this species is of lit-

tle or no avail should we fail to prohibit the draining of the marshes in which it lives.

It is heartening to see that section 5 authorizes the Secretary to acquire lands to carry out the conservation and restoration of species and subspecies of wildlife he lists as endangered. Many important biotopes will have to be brought into Federal ownership in order to insure their future existence.

It is most gratifying to see under section 5(e) that the President of the United States would be empowered to use moneys accruing to the U.S. Government under the Agricultural Trade Development and Assistance Act to help other nations develop programs to recover their own native endangered species. It is only fitting that the United States, with its tremendous technical expertise, take the lead in preserving the world's rare and endangered wildlife.

We think it wise to direct the Secretary to cooperate with the several States to recover threatened wildlife. The States have the necessary manpower to carry out recovery programs and when a given State maintains an enlightened program consistent with this act, it is only fitting that the Secretary delegate authority to a management agency within that State.

With regard to section 8(a) which provides for permits to take an endangered species for scientific purposes, we recognize the importance of scientific research, but caution against issuing permits similar to those issued by the International Whaling Commission for ostensible research purposes.

In reality, the Whaling Commission's permits allowed for the taking of some 300 gray whales for research of marginal scientific value while the carcasses were commercially processed for the benefit of a now defunct west coast whaling company.

Also, while we recognize the need to minimize economic hardship, we feel that the safety of certain critically endangered species should not be compromised. For example, the spotted cats were placed on the U.S. list of foreign endangered fish and wildlife last year. Several hardship permits were later issued to safari companies that had contracted with sport hunters previous to the listing of the cats.

In the case of leopard and jaguar these few permits made no real difference to the wild populations, but the hard-pressed cheetah and tiger would ill afford even this small offtake. In our opinion, the utmost care should be exercised in the issuance of hardship permits. Moreover, we feel that the criteria used to judge each case must include the status of the species to be imported. Once listed, species on the periphery of existence should not be subject to the issuance of hardship permits.

Under section 9 entitled "Penalties and Enforcement," we suggest inclusion of language similar to that found under section 6(3) of H.R. 4758 which would revoke any lease, license, permit or other agreement authorizing the grazing of livestock on Federal lands, to any person convicted of a criminal violation of the act. We feel that the inclusion of this provision would be an aid to enforcement.

Defenders is pleased to note in section 9(g)(1) that all animal importers must register with the Secretary of the Treasury and that onerous recordkeeping tasks will be placed upon them. This will make it more difficult for dishonest individuals to circumvent the act.

Finally, we are delighted to see the inclusion of endangered flora in H.R. 37. Wild plants are of great potential importance to man. All of the agricultural varieties of plants are derived from wild forms. Furthermore, a large percentage of drugs important in the treatment of human diseases are obtained from wild plants.

Atropine, colchicine, digitalis, morphine, papaverine, and reserpine are only a few of the valuable substances used in medicine which are derived from plants.

It is impossible to know which species of plants will, in the future, become of value as a source of nutrition or in the production of some vital drug. Moreover, many plants are of crucial importance to the well-being of wildlife.

In closing, Mr. Chairman, I would like to reemphasize the need to preserve biotopes as well as individual plants and animals. The act should provide for strong punitive action against all those who disturb, degrade or otherwise alter biotopes in which endangered species are found.

Mr. DINGELL. Mr. Seater, the committee appreciates your kindness, and we will now hear from Mr. Harold Watling at this time.

Do you have some comments you want to make with regard to the legislation before us?

Mr. WATLING. Thank you, Mr. Chairman.

Mr. Dingell, my name is Harold Watling. I am a manager of the Defenders of Wildlife Preserve in the area of Aravaipa and Pinal Counties in Arizona.

The Defenders of Wildlife are deeply concerned about the density of wolves on our land and ranches in our vicinity. It has not been determined if these wolves came originally from Mexico or if they are the last survivors of Arizona's native population.

The inventories of wildlife defenders have reimbursed one rancher for the total value of two calves killed by the wolf. We have also made other reimbursements of similar nature when it can be firmly established that the wolf took it or a mountain lion was the offending animal.

Now, a small group of ranchers attributes the disappearance of any calf to either a wolf or mountain lion, and has created an independent bounty pool that will pay \$500 to any man who kills any wolf or \$200 for the destruction of any mountain lion.

It is useless for us to tell these ranchers on their tragically overgrazed land that calves die for many reasons other than predation.

The wolf is protected by Arizona game and fish laws, but may be destroyed for damaging property.

At the Graham County end of the defenders of wildlife preserve, where I am employed, overhunting as well as overgrazing has depleted the prairie species, chiefly the mule deer, the peccary at the end of the preserve in Pinal County, where no hunting has been permitted by the original owners from whom defenders acquired this part of the preserve, and where we have drastically reduced grazing in recent years, no kills of livestock by either wolf or mountain lion have occurred.

We hope that the day is in sight when the Federal Government will be able to protect our very few remaining wolves before they join Arizona's grizzly bear in final extinction.

Mr. Dingell, I am here on very short notice from Arizona, but I will be happy to answer any questions about the wolves.

Mr. DINGELL. We thank you for your presence and testimony.

Mr. BREAUX?

Mr. BREAUX. Thank you, Mr. Chairman. I have no questions other than to compliment Mr. Seater.

Mr. Seater, I am glad to see you agree with the concept of allowing States to have good sound management practices of their own.

Thank you, Mr. Chairman.

Mr. DINGELL. Mr. Forsythe?

Mr. FORSYTHE. No questions.

Mr. DINGELL. Mr. Studds?

Mr. STUDDS. No questions.

Mr. DINGELL. Mr. Mills?

Mr. MILLS. No questions.

Mr. DINGELL. Mr. Potter?

Mr. POTTER. I would say to Mr. Seater only that if you have some specific language changes, it would be very helpful to the committee to have them before us when we start to mark up the bill. I have no idea when that will be, but it makes our lives a whole lot easier.

Mr. SEATER. Fine.

Mr. POTTER. I would like to ask Mr. Watling, I had not realized that there was a wolf population in Arizona.

Mr. WATLING. No one has ever sighted this wolf. It has not been seen. I have a picture of a track here that was made about 6 hours after the kill was made. In fact I have another track here. I have a picture of a kill by a mountain lion and also a kill by a wolf of a cow, where he grabbed ahold of the animal's nose.

Mr. DINGELL. You sure this is a wolf, or a coyote dog, a coyote, or a cross or what?

Mr. WATLING. No, we are sure that it is a wolf. There has been proof. This was made by some hairs that were taken.

I have only been with the defenders since August of last year, but before I was up there it was determined that it was a wolf.

Mr. SEATER. Perhaps I could answer that question. Dr. Lendell Cockrom, of the University of Arizona, has seen these prints, and he thinks this is a population of *Canis lupus baileyi*, a subspecies known as the Mexican wolf which is about to be listed as an endangered species.

Mr. POTTER. Under the treaty?

Mr. SEATER. No, on our U.S. list. It was proposed about 60 days ago for inclusion.

Mr. POTTER. This is something I worried about and forgot about, and it just popped back in my head.

Are you satisfied that the bills before the committee go far enough to prohibit the practice of paying bounties on animals which may be defined as endangered?

Mr. SEATER. Well, I just assumed if an animal was endangered, no bounty would be permitted.

Of course, I suppose you have State jurisdiction that might conflict to some degree with Federal jurisdiction on this. I do not know.

One thing I thought about is that it might be possible in the development of recovery plans for specific endangered species for the Federal Government to pay some indemnities to livestock owners. I do not know whether this is possible, but it is something we ought to think about.

Mr. POTTER. Something else you might want to think about is that we discussed yesterday with the Interior Department the possibility of using authorities under this act to reintroduce species in areas where they have been driven out.

Mr. SEATER. Yes, I think that is an excellent idea. In fact, with the Eastern timberwolf, I think that it could be reintroduced in parts of Michigan, Wisconsin, and possibly even in New Hampshire on Federal land in those States.

Mr. POTTER. We will have before us some gentlemen from the State of Minnesota this afternoon. I suspect they want to talk to us about the wolf up there.

Do you have any remarks you would like to make on that subject?

Mr. SEATER. I understand that Mr. Herbst, the commissioner of the Department of Natural Resources, State of Minnesota is amenable to this idea of making some wolves available for translocation purposes. I suppose the trick now is to get the other States to agree.

Mr. POTTER. I can see how that might be interesting.

Mr. SEATER. There is some indication that the State of New Hampshire might agree with this. The White Mountains National Forest is quite a large area in New Hampshire.

Mr. POTTER. That is all.

Mr. DINGELL. Gentlemen, Mr. Potter has indicated that the committee would like to receive from you suggestions for amendments. We would appreciate receiving your specific suggestions as to amendments, including amendatory language.

Mr. SEATOR. Certainly.

Mr. DINGELL. We thank you for your presence, and your very helpful testimony.

Mr. Breaux, the Chair recognizes you for some insertions.

Mr. BREAUX. With your permission and subject to approval on grounds of relevancy by the counsel, I would like to offer various reports and statistics on the Louisiana alligator season by our State Wildlife Department, which will be beneficial to the committee and the Department.

Mr. DINGELL. Without objection, they will be received for that purpose.

[Documents referred to follow:]

CHRONOLOGY OF ALLIGATOR LAW IN LOUISIANA

Prior to 1950 listed as "outlaw".

1953—Outlawed in coastal parishes. Could be destroyed at will. Size limit 2-ft. and up, restricted the taking of eggs.

1954—Outlawed in May, June, July and August in coastal parishes but not elsewhere.

1958—Removed from outlaw list, placed on non-game quadruped with 5-ft. size.

1960—Gave authority to set season and methods of taking.

1962—Coastal zone opened except Cameron Parish which was closed.

1963—Same as 1962 season.

1964—Season closed in Louisiana by Board Action and has remained closed.

1964—Resolution passed by Commission October 27 favoring the Amendment to the Lacey Act.

1965—House of Representatives Bill 8038 introduced on May 10, 1965 by late Congressman T. A. Thompson of Louisiana to amend Sections 41, 43 and 44 of Title 18 of the United States Code to include amphibians and reptiles.

1969—Alligator season closed nationwide, Federal Lacey Act finally amended and Sections 7, 8 and 9 of the Endangered Species Act of 1969 (Public Law 91-135; 83 Stat. 275)

1970—June 3, Lacey Act Amendment becomes law to prohibit interstate movement of illegally taken skins.

1970—Act 550 was introduced in Louisiana to reduce the legal size to 4-ft. and provide numerous regulations with regard to taking methods and record keeping of legal harvested alligators.

1972—September. Experimental alligator season set by Commission.

U.S. DEPARTMENT OF THE INTERIOR,
BUREAU OF SPORT FISHERIES AND WILDLIFE,
Washington, D.C., December 10, 1964.

Mr. J. D. HAIR, JR.,

Director, Louisiana Wild Life and Fisheries Commission, Wild Life and Fisheries Building, New Orleans, La.

DEAR MR. HAIR: We have your letter of November 18 enclosing a resolution of the Louisiana Wild Life and Fisheries Commission favoring an amendment of the Lacey Act to cover alligators. The resolution refers to a resolution of the Southeastern Association of Game and Fish Commissioners at its recent meeting in Clearwater, Florida, calling for protection of alligators in intra-state transportation. Presumably the term "inter-state transportation" was meant.

Title 18, U.S.C., § 43, which is derived from the Lacey Act, limits Federal authority to violations involving any "wild mammal or bird". Thus, we have been unable to assist the States in the protection of alligators when taken or possessed contrary to State laws and shipped or transported across State boundaries or entered into foreign commerce.

Our Department is considering recommending legislation that would make the provisions of section 43 applicable to reptiles and amphibians as well as birds and mammals. This would give protection to alligators and would, we hope, reduce poaching of alligators and illegal traffic in their hides. Our proposal to amend section 43 has not yet been formalized.

We share your interest and concern in this matter. Thank you for writing to us on this subject.

Sincerely yours,

A. V. TUNISON,
Acting Director.

DECEMBER 15, 1964.

Hon. T. A. THOMPSON,
*House Office Building,
Washington, D.C.*

DEAR CONGRESSMAN THOMPSON: The Louisiana Wild Life & Fisheries Commission is very much in favor of amending the Lacey Act to cover alligators as a means of providing additional protection for these reptiles when taken or possessed contrary to the State Law and shipped or transported across our state boundary. Also favoring such an amendment is the Southeastern Association of Game and Fish Commissioners that met in October in Clearwater, Florida. The membership of this association includes the game departments of the fourteen southeastern states.

As we understand it Public Law 86-702, Section 43 of Title 18 limits federal protection to wild mammals and birds but does not cover reptiles or amphibians. If it would be possible for you to assist in amending this Act to include reptiles it would be very much appreciated and would, no doubt, be very helpful in restoring this very valuable form of wildlife to Louisiana's Coastal marshes.

Enclosed are copies of our Commission's resolution, the resolution of the Southeastern Association of Game and Fish Commissioners, copy of a letter received from the Bureau of Sport Fisheries & Wildlife on this subject, and a proposal for changes in the existing Lacey Act.

Any assistance that your office may be able to render in amending the Act to cover alligators will be greatly appreciated.

Sincerely,

J. D. HAIR, JR.,
Director.

EXCERPT FROM THE MINUTES OF THE MEETING OF THE LOUISIANA WILD LIFE AND FISHERIES COMMISSION HELD IN NEW ORLEANS ON TUESDAY, OCTOBER 27, 1964

* * * * *

"After discussion, on motion of Mr. Crain, seconded by Mr. Buquet, the following resolution was adopted:

"Whereas, alligators are an important and valuable resource in Louisiana deserving of every consideration in the Commission's Wildlife Management Program, and

"Whereas, due to the extreme high monetary value of alligator skins, complete enforcement of the State's alligator regulations has become increasingly difficult, and

"Whereas, many other Southern States are encountering the same problems, and recently the Southeastern Association of Game and Fish Commissioners passed a resolution, at their meeting in Clearwater, Florida, requesting the Federal Government to amend the Lacey Act to include alligators in its provisions and protection while in intra-state transportation; Therefore, be it

Resolved, That the Louisiana Wild Life and Fisheries Commission on this 27th day of October, 1964, in executive session, go on record as favoring the amendment of the Lacey Act to cover alligators, and request the U. S. Bureau of Sport Fisheries and Wildlife to support and work for the adoption of such an amendment."

* * * * *

This is to certify that the above and foregoing is a true and correct copy of excerpt from the minutes of the meetings of the Louisiana Wild Life and Fisheries Commission, held on Tuesday, October 27, 1964.

J. D. HAIR, JR.,
Director.

A RESOLUTION

Urging clarification of certain provisions of the Criminal Code relating to the transportation or receipt of wild birds or wild animals taken in violation of State, National, or foreign laws (18 U.S.C. 43), and for other purposes.

Whereas, Public Law 86-702, amending Section 43 of Title 18, United States Code, limited the Act to protection of wild mammals or birds taken in violation of State, National, or foreign laws, and

Whereas, the several States regulate the taking of various species of wild animals and birds, including reptiles and amphibians, and

Whereas, this segment of the natural resources of the various States is becoming more important in their economy, and

Whereas, Section 43 of Title 18, United States Code, limits Federal authority to violations involving wild mammals and birds, thus excluding reptiles and amphibians, placing them outside the protection of Federal regulations, and

Whereas, the Bureau of Sport Fisheries and Wildlife has proposed that Section 43 of Title 18, United States Code, be amended to make it unlawful to enter any wild vertebrate animal or bird, or the offspring or parts thereof, into interstate and foreign commerce if such were unlawfully taken, captured, killed, transported, purchased, sold, or otherwise possessed; Now, therefore, be it

Resolved, That the members of the Southeastern Association of Game and Fish Commissioners at its regular fall meeting in Clearwater, Florida, on this the 21 day of October, 1964, go on record as urging amendment of Section 43, Title 18, United States Code, commonly referred to as the Lacey Act, to regulate the interstate transportation of all wild birds or animals, the take of which is governed by State game laws and regulations; be it further

Resolved, That a copy of this Resolution be forwarded to the Secretary of the Interior; the Assistant Secretary of the Interior for Wildlife; and the Director, Bureau of Sport Fisheries and Wildlife; and further that copies be made available to members of the congressional delegations of the various States urging immediate action by the Congress to amend Section 43, Title 18, United States Code, at the earliest possible date, in accordance with the attached proposed amendment.

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, D.C., December 18, 1964.

Mr. J. D. HAIR, Jr.,
*Director, Louisiana Wild Life and Fisheries Commission,
New Orleans, La.*

DEAR MR. HAIR: In the absence of Congressman Thompson, who is in Louisiana, I am taking the liberty of acknowledging your letter in which you make known the Commission's position regarding the Lacey Act.

This is a matter in which I know Congressman Thompson will be interested in assisting, and I shall call it to his attention as soon as possible. You will, no doubt, be hearing from him directly in the very near future.

With kindest regards and best wishes, I am,

Sincerely,

(Mrs.) FRANCES A. FORGY,
Executive Secretary.

UNITED STATES HOUSE OF REPRESENTATIVES,
COMMITTEE ON MERCHANT MARINE AND FISHERIES,
Washington, D.C., March 18, 1965.

Mr. J. D. HAIR, Jr.,
*Director, Louisiana Wild Life and Fisheries Commission,
New Orleans, La.*

DEAR MR. HAIR: I have just recently read an interesting article by Mr. Charles H. Callison, published in the March-April issue of Audubon Magazine, entitled "A Way to Curb Alligator Poaching", as a means toward curbing the depletion of our alligator stock.

It is my understanding that the Louisiana Wild Life and Fisheries Commission has gone on record in favor of legislation to prohibit interstate commerce in alligators and alligator parts taken in violation of State laws.

Naturally, this matter gives me great concern. I would like to know the position of the Louisiana Wild Life and Fisheries Commission on this subject and would be most appreciative of any comments you may care to make.

With kind regards, I am,

Sincerely,

T. A. THOMPSON,
Chairman, Subcommittee on Fisheries and Wildlife Conservation.

MARCH 23, 1965.

Hon. T. A. THOMPSON,
*House Office Building,
Washington, D.C.*

DEAR CONGRESSMAN THOMPSON: This is in reference to your letter of March 18, 1965, concerning the views of the Wild Life & Fisheries Commission in providing additional protection for alligators by amending the Federal Statute. Our Commission is very much in favor of a change in the Lacey Act so that it will include reptiles, such as alligators, as well as birds and mammals.

Enclosed is a copy of letter which we forwarded to you previously and also a copy of the resolution adopted by the Southeastern Association of Game & Fish Commissioners favoring an amendment to the Lacey Act to provide additional protection for alligators. The Southeastern Association is comprised of directors from the fourteen states in the southeast and all were in favor of this proposal.

Anything that you can do to see that this amendment is placed into effect will be greatly appreciated.

With best wishes, I am,

Sincerely,

R. K. YANCEY,
Assistant Director.

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON MERCHANT MARINE AND FISHERIES,
Washington, D.C., May 21, 1965.

Mr. R. K. YANCEY,
Assistant Director, Louisiana Wild Life and Fisheries Commission,
New Orleans, La.

DEAR DICK: In accordance with the desire of the Louisiana Wild Life and Fisheries Commission and the Southeastern Association of Game and Fish Commissioners to provide additional protection to alligators, I introduced, on May 10, H.R. 8038, a copy of which is enclosed.

This bill would have the effect of extending existing law to amphibians and reptiles. You will note that it was referred to the Committee on the Judiciary.

Please be assured of my continued interest in this matter and as soon as hearings are scheduled, I will write you again.

With kindest regards.

Sincerely,

T. A. THOMPSON.

[H.R. 8038, 89th Cong., 1st sess.]

A BILL To amend sections 41, 43, and 44 of title 18 of the United States Code to include amphibians and reptiles within those sections.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 41 of title 18 of the United States Code is amended to read as follows:

“§ 41. Hunting, fishing, trapping; disturbance or injury on wildlife refuges.

“Whoever, except in compliance with rules and regulations promulgated by authority of law, hunts, traps, captures, or willfully disturbs or kills any bird, fish, amphibian, reptile, or wild animal of any kind whatsoever, or takes or destroys the eggs or nests of any such bird, fish, amphibian, or reptile, on any lands or waters which are set apart or reserved for sanctuaries, refuges, or breeding grounds for such birds, fish, amphibians, reptiles, or animals under any law of the United States, or willfully injures, molests, or destroys any property of the United States on any such lands or waters, shall be fined not more than \$500, or imprisoned not more than six months, or both.”

Sec. 2. (a) The first and second paragraphs of section 43 of title 18 of the United States Code are each amended by striking out “wild mammal or bird” and inserting in lieu thereof at each such place “wild mammal, amphibian, reptile, or bird”.

(b) The last paragraph of section 43 of title 18 of the United States Code is amended to read as follows:

“Shall be fined not more than \$500 or imprisoned not more than six months, or both; and the wild mammals, amphibians, reptiles, or birds, or the dead bodies or parts thereof, or the offspring or eggs thereof, shall be forfeited.”

Sec. 3. (a) The first paragraph of section 44 of title 18 of the United States Code is amended by striking out “wild animals or birds” and inserting in lieu thereof “wild animals, amphibians, reptiles, or birds”.

(b) The third paragraph of section 44 of title 18 of the United States Code is amended by striking out “wild animals” and inserting in lieu thereof “wild animals, amphibians, or reptiles”.

JUNE 8, 1965.

Hon. T. A. THOMPSON,
House Office Building,
Washington, D.C.

DEAR CONGRESSMAN THOMPSON: Your letter of May 21, 1965, with attached copy of H.R. 8038 which you have introduced in Congress to provide additional protection to alligators has been received.

We certainly appreciate your efforts in introducing this bill and I am taking the liberty of forwarding a copy of it to the President of the Southeastern Association of Game & Fish Commissioners.

We would also appreciate your keeping us advised as to any steps that we may be able to take in assisting in the enactment of this legislation.

Sincerely,

R. K. YANCEY,
Assistant Director.

RÉSUMÉ OF ALLIGATOR RESEARCH STUDIES MADE

ALLIGATOR RESEARCH PAPERS

- Chabreck, Robert H. 1963. Methods of capturing, marking and sexing alligators. Proc. 17th Annual Conference Southeastern Association Game and Fish Commissioners 17:47-50.
- Chabreck, Robert H. 1965. The movement of alligators in Louisiana. Proc. 19th Annual Conference Southeastern Association Game and Fish Commissioners 19:102-110.
- Chabreck, Robert H. 1966. Methods of determining the size and composition of alligator population in Louisiana. Proc. 20th Annual Conference Southeastern Association Game and Fish Commissioners 20:105-112.
- Chabreck, Robert H. 1967. Alligator farming hints. Louisiana Wild Life and Fisheries Commission., Typewritten report 21 pp.
- Chabreck, Robert H. 1967. The American alligator—past, present and future. Proc. 21st. Annual Conference Southeastern Association Game and Fish Commissioners 21:554-558.
- Chabreck, Robert H., and Ted O'Neil 1967. What later . . . Mr. Gator. La. Conservationist 19 (3 & 4) : 8-9.
- Joanen, Ted 1969. Nesting ecology of alligators in Louisiana. Proc. 23rd. Annual Conference Southeastern Association Game and Fish Commissioners 23: 141-151.
- Joanen, Ted and Larry McNease, 1970. A telemetric study of nesting female alligators on Rockefeller Refuge, Louisiana. Proc. 24th Annual Conf. Southeastern Association Game and Fish Commissioners 24: 175-193.
- Joanen, Ted and Larry McNease. 1971. Electronic alligators. La. Conservationist 23 (7 & 8) : 10-13.
- Joanen, Ted and Larry McNease, 1971. Propagation of the American alligator in captivity. Proc. 25th Annual Conference Southeastern Association Game and Fish Commissioners.
- Joanen, Ted and W. Guthrie Perry, Jr., 1971. A new method for capturing alligators using electricity. Proc. 25th Annual Conference Southeastern Association Game and Fish Commissioners.
- Joanen, Ted and Larry McNease. 1972. A Telemetric Study of Adult Male Alligators on Rockefeller Refuge, Louisiana. Proc. 26th Annual Conference Southeastern Association Game and Fish Commissioners.

REPORT OF DR. GLASGOW—ALLIGATOR SEASON

A REPORT OF THE LOUISIANA ALLIGATOR ADVISORY COMMITTEE

On July 7, 1972, an Advisory Committee was named by the Louisiana Wild Life and Fisheries Commission to evaluate a proposal for a controlled harvest of alligators in Cameron Parish and to recommend a course of action regarding the proposal.

The committee has reviewed the recent history of alligators in Louisiana and elsewhere very carefully, and several factors stand out which merit consideration by everyone interested in alligators.

The American alligator has a tremendous reproductive capacity and the rapid response of populations to management and protection has been clearly demonstrated many times on wildlife refuges, parks and private lands across the southeastern U.S. However, it was discouraging for this committee to find that alligator populations remain low in many parishes in Louisiana and in several other states, in spite of the season being closed for a number of years.

This is an unfortunate situation, apparently perpetuated in varying degrees by disinterested courts, incompetent law enforcement officers, an uninformed public and an industry which seeks to capitalize on these weaknesses.

Nevertheless, this committee does not believe it fitting or within the realms of justice to penalize one area for another's weakness. The land owners and managers of Cameron Parish have a well-defined area, with a high alligator popu-

lation, and deserve the right to demonstrate that alligators can be selectively harvested without jeopardizing the resource which they have worked so hard to build and maintain.

Many people may frown upon killing alligators in one area at a time when the animal is at critically low population levels in many other areas. However, this is a negative approach which can prove disastrous to all wildlife. In fact, the alligator situation in Cameron Parish should serve as a shining example of modern wildlife conservation in practice. It represents a well-planned, unified effort by state and federal agencies, local law enforcement officers, local prosecutors and courts, and local land owners and managers, all work together with one objective—to rebuild alligator populations to levels which will support a sustained yield harvest.

The alligator in Camaron Parish was overharvested for many years and reached critically low levels during the early 1960's. A plan of action was put into effect involving research, management, enforcement, and judicial systems and can stand today as a guide for any other parish or county interested in rebuilding alligator populations. This plan should be effective with all Crocodilia and may well serve as a guide for countries wishing to rebuild crocodile and caiman populations. They have demonstrated that alligators can be managed and populations restored, and that others need do now is follow the plan in cookbook fashion. However, others should be aware that a weak or broken link in the chain built with the cooperative efforts of management, enforcement, and judicial interests will spell disaster for the alligator, as the situation now stands in most other areas. The passage of laws, then standing back and waiting for results has not gotten the job done.

The final stage in the Cameron Parish plan was a controlled harvest of the alligator resource on a sustained yield basis. The prior stages of rebuilding populations progressed like clockwork, but the final stage must now be initiated and evaluated before the test is complete.

The big decision before this committee now is should the Cameron Parish plan be fully implemented, or should the harvest be denied, just to satisfy outside interests. This committee realizes that while the alligator may be an interesting novelty to visitors, it is also a predator and can cause considerable damage where high populations go uncontrolled. This committee also realizes that the failure to permit a harvest simply to meet the wishes of outside interests will alienate vital local support and result in disaster for the alligator in one of its major strongholds.

In consideration of these facts, the Alligator Advisory Committee recommends to the Louisiana Wild Life and Fisheries Commission that an experimental alligator harvest be tested in Cameron Parish and that the alligators be harvested at a rate which will allow continued population expansion. The harvest should be undertaken with safeguards for controlling the number of animals taken and with special marking so that individual skins can be identified. The sale of skins should be carefully controlled by the Commission and the appropriate federal officials and wildlife officials in all other states affected should be advised of the buyers, destination of skins shipped out-of-state, number of skins in each shipment, and identifying numbers and measurements. All laws and regulations should be rigidly enforced and careful follow-up checks should be made regarding skins held within the state and their ultimate disposition. The assistance of federal wildlife agents should be requested by the Commission for help in matters dealing with the interstate shipment of skins. Also, a vigorous publicity program should be initiated to discourage illegal operators and gain public support for the program.

In keeping with the experimental nature of this program, a careful evaluation should be made of all aspects concerning the harvest such as: the feasibility of quotas established, harvest techniques, size and sex composition of animals taken, impact on alligator populations within the parish, effectiveness of the tagging program, problems involved with administering tags, special enforcement problems involving the harvest locally and in other areas of the state, and public reaction to the harvest. An adequate number of persons should be assigned to the evaluation and should recommend corrective measures where needed. The evaluations and recommendations should be prepared in report form and copies distributed upon request.

CENSUS RECORD ON ALLIGATOR SURVEYS

LOUISIANA WILD LIFE AND FISHERIES COMMISSION,
New Orleans, La., March 22, 1973.

To: Mr. J. Burton Angelle, Director.

From: Allan B. Ensminger, Chief, Refuge Division.

Reference is made to your request for a report on how Louisiana conducts our coastal alligator census. Nest are counted from a Bell Model 47G-4A Helicopter flying permanently established transect lines which were established in 1968 for the vegetative type map study. These lines numbering 29 for the entire Louisiana coast are simply north-south transects spaced at 7.5 degree intervals along the Texas-Louisiana line and extending eastward to the Mississippi line. Each line extends from the coast to the northern boundary of the marsh. Approximately five days of helicopter time is required to fly these lines. Nest are counted along the transect lines and the number of nest are then converted to project alligator populations according to each marsh type within Louisiana three marsh zones.

The helicopter is flown along each transect line at an altitude of approximately 200-ft. An observer scans an arch of area adjacent to the transect line. Approximately 24,500 acres of marsh are surveyed by this method. This represents .76% of the 3,200,000 acres of marsh in the brackish, intermediate and fresh types. Saline marshes are not inventoried because they do not contain alligators. We utilize a figure of 5% of the population of alligators is made up of nesting females thereby the number of nests observed can be used to project the total alligator population for the total acreage of alligator habitat in the State.

Mr. Ted Joanen and Larry McNease have conducted these alligator transects since their inception. We feel that the figures obtained from the transects represents a very conservative estimate of the total population of alligators in the coastal marshes. Last year's inventory reflected slightly over 250,000 animals. The census is scheduled for July of 1973, the same period of time that all the other transects have been flown. This is necessary because the peak of the nesting season has been completed by this date.

In addition to the coastal alligator population, Louisiana has a very large number of animals in the Atchafalaya Basin swamp complex, in old breaks in central and north Louisiana and in the heads of small streams and bayous throughout the remainder of the State.

LOUISIANA WILD LIFE AND FISHERIES COMMISSION,
New Orleans, La., March 22, 1971.

Mr. C. EDWARD CARLSON,
Regional, Director, U.S. Department of Interior, Fish and Wildlife Service,
Bureau of Sport Fisheries and Wildlife, Atlanta, Ga.

DEAR MR. CARLSON: Reference is made to your letter of February 26, 1971 requesting pertinent information with regard to the status of the American alligator in Louisiana. It is indeed a pleasure to be afforded the opportunity of officially expressing our concern about the future of the alligator in the United States and particularly in Louisiana.

At the present time we feel that by conservative estimate we have approximately 300,000 alligators in our State. This estimate is based on detailed studies conducted by our Commission during the past two years. We employed a helicopter and flew transects in a north-south direction during the late summer months in order to obtain an accurate inventory of alligator nests and animals. This type of inventory was limited strictly to the open marshes and it revealed the presence of about 200,000 animals in our coastal marshes alone. From field observations within the cypress swamp areas of the Atchafalaya Basin and the wetland areas of north Louisiana an additional 100,000 animals are calculated. As pointed out before, we feel that this is a very conservative estimate for our population. There has been a pronounced increase in numbers of alligators in Louisiana over the past 10 years and especially within the past 4 years in Southwest Louisiana where severe penalties have been imposed by the courts for alligator poaching. In many sections of Vermilion and Cameron Parishes, we are presently carrying an alligator for every three acres of marsh land and this represents a tremendous population of reptiles.

Your second question requested our views about whether or not the alligator should be retained on the endangered species list. Having the alligator on the

endangered list has served its purpose since the recent enactment of Federal legislation. We recommend removing the alligator from the endangered species list. In fact our Commission is on record as being opposed to the alligator being considered an endangered species any longer. We fully recognize that many areas in the Southeastern United States within the natural range of the American alligator presently has a low population, but by no stretch of the imagination should the American alligator be termed as being endangered or becoming extinct because this is simply not true. Your department alone has sufficient holdings within our Louisiana coastal marshes to provide adequate habitat and enforcement to prohibit the animal from ever becoming extinct. In addition to your holdings, our Commission owns and manages an additional 350,000 acres of coastal marsh refuges and wildlife management areas where alligators are provided complete protection. In addition to this, dozens of large marsh land owners have sheltered alligators on their properties for many years. Admittedly, these individuals have provided this protection for the sole purpose of some day being able to harvest a limited crop of skins in return for their effort. We frankly feel that they are justified in this attitude. Further that an active alligator management program should be vigorously pursued in Louisiana whereby surplus animals can be removed on a sustained yield basis in accordance with sound wildlife management practices. In Louisiana as in many other parts of the natural range of the alligator, this animal should be considered a valuable commercial renewable resource with prime importance being placed on his skin as a product for fine quality luxury leather. The animal also plays an important role in the overall scheme of wetland ecology and without proper management; including animal harvest; over population would occur since the annual increase of young alligators is preyed upon by large alligators. Additionally, the marsh land owner must realize revenue from his property from trapping, fishing, hunting leases, etc. otherwise he will be tempted if not forced to drain it and convert it to agriculture such as cattle pastures thereby resulting in an irreplaceable loss of wetlands. Income from an annual harvest of alligators would help forestall this eventually.

With regard to your third question, we were successful in passing Legislation in 1970 which we feel to be satisfactory for the management of alligators in Louisiana especially since the Amendment to the Lacey Act now makes it a Federal offense to transport illegally taken skins across State lines. This Amendment alone should solve most of the Southeastern States problems except in rare instances where poachers would have a market within a State for skins that could be turned into a finished product without crossing a State line. We do not anticipate additional Legislation over and above that enacted in 1970 and do not feel that we need additional Legislation to properly manage alligators in this State.

I would like to also take this opportunity to express to you our very sincere concern over the trend that is apparently developing regarding Legislation being enacted by other States prohibiting the sale of crocodilian products under the guise of protecting an endangered species. It is our opinion that if this becomes universal, we will have moved from one extreme of over exploitation to the other involving over protection with one being just about or bad as the other. In effect this is about like jumping from the frying pan into the fire. We should logically manage 'gators between the two extremes just as we managed other renewable natural resources. We do not feel that there is one strong, justifiable need for such practices and would strongly solicit the Department of Interior's support in opposing this type of Legislation where ever it crops up in the nation. I am sure that you are aware of the fact that the American alligator skins has historically made up a very small percentage (less than 10%) of the leather used in the manufacturing of crocodilian products. Consequently Legislation prohibiting the sale of crocodilian products is ridiculous and it is our opinion that it should not be encouraged by State game departments or the Bureau of Sport Fisheries and Wildlife.

We trust that this will satisfactorily answer your questions, and we appreciate the opportunity to comment. As I mentioned above, we have tremendous marsh acreage in private ownership that is highly satisfactory for the commercial production of alligators and we also have a limited number of legitimate dedicated alligator farmers who are making determined efforts to produce alligators under controlled conditions. We feel that the present trend toward eliminating the taking of alligators for leather products would be most detrimental to a very valuable resource in Louisiana.

Anything you can do to assist us in removing the alligator from the endangered species list would be appreciated.

Looking forward to seeing you in the near future, I am,

Sincerely yours,

CLARK M. HOFFPAUER, *Director.*

U.S. DEPARTMENT OF THE INTERIOR,
FISH AND WILDLIFE SERVICE,
BUREAU OF SPORT FISHERIES AND WILDLIFE,
Atlanta, Ga., February 20, 1971.

MR. CLARK M. HOFFPAUER,
*Director, Wildlife and Fisheries Commission,
New Orleans, La.*

DEAR MR. HOFFPAUER: Because of the great interest in the welfare of the American alligator we are attempting to update our status information on this unique species in the Southeast, and are contacting the respective directors for this information. We would appreciate your comments on the following questions.

1. What is the current population status of the alligator in your State? Are numbers increasing, decreasing, or remaining status quo?

2. Do you feel that there has been sufficient improvement in the status of the alligator to warrant a change from their current categorization as an "endangered" species?

3. Is the alligator currently afforded complete protection by State law?

Is additional legislation regarding the species pending in your State?

Your cooperation is appreciated.

Sincerely yours,

C. EDWARD CARLSON,
Regional Director.

MR. DINGELL. The Chair notes that that completes the hearing for this morning.

This afternoon we will hear from the State of Minnesota, the Sierra Club, and from the assistant attorney general for the State of New York.

If there is no further business to come before the committee at this time, we stand adjourned until 2 o'clock this afternoon.

[Whereupon, at 11:40 a.m., the subcommittee recessed, to reconvene at 2:00 p.m., of the same day.]

AFTERNOON SESSION

MR. DINGELL. The subcommittee will please come to order.

This is a continuation of hearings on H.R. 37 and H.R. 4758 and other bills relating to endangered species.

The committee is pleased to welcome from the State of Minnesota, Mr. Mike Casey, director, department of game and fish, accompanied by Mr. Milton Stenlund, regional game supervisor.

Mr. Casey, we are pleased to have you with us.

STATEMENT OF MIKE CASEY, DIRECTOR, MINNESOTA DEPARTMENT OF NATURAL RESOURCES, ACCOMPANIED BY MILTON STENLUND, REGIONAL GAME SUPERVISOR

MR. CASEY. Mr. Chairman and members of the committee, I am Mike Casey, director, Department of Fish and Game, Department of Natural Resources, State of Minnesota.

Accompanying me is Mr. Milton Stenlund, the regional game supervisor.

Mr. Chairman, I have a position statement of the Minnesota Department of Natural Resources relating to the species *canis lupus lycaon*, the eastern timber wolf.

I would like to read the statement, and I believe copies were distributed.

In regard to H.R. 37 and H.R. 4758, and other legislation relating to endangered species, I wish to offer the following statement which deals specifically with the eastern timber wolf, a species which has been placed on the Department of the Interior's endangered species list.

Minnesota has the only substantial population of eastern timber wolves south of the Canadian border. Although the wolf population has increased considerably during the past 25 years in Minnesota, there remain those persons who are fearful that the animal faces extinction.

Some of these persons have organized into groups on a national scale to oppose the Minnesota Department of Natural Resources wolf management plan now being considered in bill form by the 1973 Minnesota State Legislature.

The bill, which would give the timber wolf status as a big game animal—just as our deer, moose, and bear—has passed in the House and is now being heard in the Senate.

The timber wolf has been native to northern Minnesota as far back as records go. Its primary range was reduced during this century, however, so that it is now found mainly in the northeastern part of the State, and in the Superior National Forest in particular. Its primary range contains 14,000 square miles, and the peripheral range 17,000 square miles.

Mr. Chairman, we have a map of the State of Minnesota that outlines the primary range of the timber wolf, and also the peripheral range, and also shows our boundary water canoe area.

Mr. DINGELL. Mr. Casey, if you would like to submit that for the record it will be appropriate, and the Chair so directs, without objection.

[The map referred to was placed in committee files.]

Mr. CASEY. The wolf population began to rebound following the ban on low level flight over the Boundary Waters Canoe Area. Ordered by the Federal Government in 1948, the ban was intended to stop the fly-in resort operation in the Boundary Waters Canoe Area and preserve the wilderness character of that area.

Prior to the flight ban wolves were being hunted extensively in the winter from low-flying aircraft and the rule came as a reprieve for these animals.

Despite a bounty on the wolf until 1965, their numbers showed a fairly steady increase following the Federal flight ban, and the State followed up a few years later with a law prohibiting hunting from aircraft, the use of snares, set guns, and poison.

You can see at the time, Mr. Chairman, we had a real sincere concern for the timber wolf at that time when the wolf was still considered as a varmint species, and was not classified as a game animal.

Wolves have proven extremely difficult to take by hunters afoot, and nearly all of those taken in recent years have been by trapping.

Three major separate research studies have been completed on the wolf and two are continuing. They cover a span of 35 years and form the main basis of information which was used to prepare the wolf management plan.

Mr. Chairman, I would like at this time, or at any time during this presentation, if I could call on Mr. Stenlund, who is one of our game managers in the State of Minnesota. He has been with our department for over 25 years. He has a master's degree in wildlife management. He is an authority on timber wolf, and has spent all of his time in the northern part of the State in the home area of the timber wolf, and has been engaged in a number of research projects, and a long-range study on the animal, and at this time, if he would like to make a comment or two in regard to the research studies that have gone on, and some that he has taken part in, I would like to have him do so.

Mr. DINGELL. Well, the Chair does observe you have additional remarks in your statement here.

Do you want to finish that before Mr. Stenlund speaks?

Mr. CASEY. Thank you.

Mr. DINGELL. It is your option, sir. I want you to know we will hear Mr. Stenlund after you complete your comments, or you can finish your comments later.

What is your preference?

Mr. CASEY. I will proceed.

Mr. DINGELL. It is up to you, Mr. Casey. We want to hear from you in your own way.

Mr. CASEY. Thank you.

Authors of and contributors to these studies included personnel from the Minnesota Department of Natural Resources, the Bureau of Sport Fisheries and Wildlife, Macalester College of St. Paul, and the University of Minnesota. Four of the authors assisted in formulating the plan or acted as consultants.

Our management plan which the pending legislation would put in effect was devised with the cooperation and approval of the U.S. Forest Service, and the regional office of the U.S. Bureau of Sport Fisheries and Wildlife. Dr. David Mech, probably the Nation's foremost authority on timber wolves, helped prepare the plan and it has been concurred with by leading wildlife specialists.

The plan reflects our policy to retain a good wolf population while at the same time providing limited sport hunting and predator control, where there is proven damage. A limited harvest, carefully regulated, will not jeopardize the population.

The plan provides that the wolf, now an unprotected or "varmint" species in Minnesota, be classed as a game animal. Currently, the only protection the wolf has is on federally owned lands within the Superior National Forest.

Even this restriction is virtually impossible to enforce since the Federal lands are intermingled with scattered tracts of private, county, and State lands. Elsewhere, wolves may presently be taken by hunting and trapping year round in unlimited quantities.

Included in the State's management plan is a 2,350 square mile area, roughly comprising the Boundary Waters Canoe Area, which would be an absolute sanctuary where no timber wolves could be taken at any time except for research purposes. This could be because of some research project maybe in one given area where we might want to take three or four wolves for the purpose of this study.

The area lies just across the border from a 900 square mile wolf sanctuary established by Canadian wildlife agencies. The new Voy-

ageurs National Park in Minnesota will provide 146,000 acres of additional sanctuary. This is roughly equivalent to 225 square miles, or something to that effect.

Taking this into consideration where there is no hunting in national parks, and now 2,350 square miles, and the 900 Canadian square miles, and the Voyageurs National Park, we have approximately 3,500 square miles of sanctuary, which amounts to over $2\frac{1}{4}$ million acres.

The classification of the wolf as a game animal would give DNR the authority to regulate the length of the season and place a limit on the number of animals that could be taken by the individual.

In addition, the commissioner of natural resources would have the authority to close the season for the balance of the year at any time after a fixed number of wolves had been taken.

Persons taking wolves would be required to file a report on each animal with an agent of the commissioner with a continuous record being kept at DNR headquarters.

The Department of the Interior has classed the wolf as "endangered" which "implies a critical condition of some kind which seriously limits the species chance of survival" and "whose prospects of survival and reproduction are in immediate jeopardy."

Research studies have shown wolf numbers have reached the saturation point in the Superior National Forest at about one animal per 10 square miles—a population equal to any recorded elsewhere. In addition, wolf numbers in the winter near Lake Superior are twice as large. Mr. Stenlund will comment on that later.

When these figures are considered along with the fact that our timber wolf range has increased twofold since 1965, I submit that the wolf is not endangered in Minnesota. The classification of "race" or "peripheral" would be more accurate.

Despite the concern by certain interest that hunters or trappers will decimate the wolf population, the truth is that the greatest problem faced by wolves in Minnesota does not originate with men but with nature itself, and more specifically, with the deer it feeds on and the deteriorating habitat in which the deer lives.

Mr. Stenlund will comment on that also.

Attempts can be made to regulate or stop the taking of wolves, but from our experiences of the past 4 years, it appears difficult to stop the decline of habitat and deer numbers in the main range of the wolf in the Superior National Forest.

Here again, speaking of habitat, under our proposed management plan, which has to do with the habitat improvement for the species, this would be a major part of the program, to improve the habitat for deer in this area which, in turn, is the thing which the wolves also need.

As deer numbers decline, so will the wolves, but we will always have wolves, because they switch to other prey species such as beaver and moose. The immediate concern of all persons interested in maintaining viable wolf numbers in Minnesota should be the improvement of habitat for deer.

While groups are attributing the alleged shortage of wolves to the actions of man, they could conceivably win their battle and lose the war through ignorance of the actual conditions as they exist in the field.

Certain other facts must be faced as well if effective regulations are to be enacted to safeguard the timber wolf.

It must be recognized that despite the statements of well intentioned wolf protectionists, predation by wolves on domestic livestock is a real problem in Minnesota, and must be dealt with realistically. To deny that the problem exists, or to take the position that those suffering losses are not entitled to protect their property will only result in passage of laws and regulations that will be generally ignored.

Further, no enforcement effort likely to be achieved will prevent landowners or hunters from shooting wolves they may encounter, if they feel the animals are too numerous and are causing substantial predation on livestock or deer. Laws which are universally unpopular cannot be effectively enforced and often worsen the very situation they are intended to correct. Prohibition, I suppose, was a prime example.

As a professional wildlife administrator, I must also point out another consideration that should be taken into account before enactment of any regulations to completely protect the timber wolf.

Unfortunately, many preservationists or protectionists are not keeping pace with continuing discoveries on the facts which make wildlife scarce or abundant. This understanding marks the difference between a conservationist and a preservationist.

Few, if any species of wildlife classified as a game animal in our country are in danger of extinction, or even having their numbers severely reduced.

In fact, many species are more abundant today because they are classed as "game" and sought after by the sportsman. While sportsmen take a certain number of these species in season, it is the sportsmen who provide the money through licenses, permit fees, and taxes paid on sporting arms, ammunition and other hunting and fishing equipment that finance the habitat and the management programs, including the game law enforcement, that is responsible for perpetuating the species.

It is ironic that our plan to increase the protection of the wolf is being criticized by persons from other States that at one time had wolves but have none now. We are being accused of plans to exterminate the wolf, when in fact we are the one State in the lower 48 that has retained a population and is trying to improve management and protection.

It seems we have done a better job than the rest, however, we do agree the present status of the wolf should be improved, and that is exactly what we are proposing. It is absolutely essential that habitat conditions be improved in the primary range if the area is to support more wolves.

It is significant that while pressure is being built up by the protectionists, pressure from those seeking increased control of the wolf as a nuisance animal is also being felt more and more. Were this situation to continue it could result in a standoff with no meaningful legislative action being taken.

The likely results of this would be more demands from ranchers and farmers on our Department to control wolves attacking livestock, and a continuing decline in habitat conditions—both conditions which would react unfavorably on the wolf population.

It is time for those who are sincerely concerned for the welfare of the wolf to put their differences aside for the good of the species. The

wolf is not a house pet, nor is he the blood thirsty man-killer of the nursery stories. Both men and the timber wolf were meant to be on this planet—the wolf can co-exist with man, if man will let him. By nature the wolf prefers the forested wilderness areas where he is least likely to encounter man, and where he finds his natural food. With wise management practices he will remain there and continue to be a most interesting and valued part of the wilderness environment.

In summary, we are opposed to any legislation which would give the Federal Government the authority to establish fish or wildlife species as endangered without the concurrence of the affected States. It is our position that to do otherwise would result in an infringement on State's rights to properly manage and protect resident wildlife species, such as the timber wolf.

By Federal standards it is an endangered species, but in our State we have a viable, healthy population of wolves that are in no danger of extinction, but have, in fact, doubled their range in the past 7 years.

Our management plan for the wolf recognizes it as a highly desirable animal and provides for: (1) perpetuating the wolf as a desirable species; (2) maximizing its potential for all interest groups; and (3) minimizing areas of conflict between wolves, domestic stock, and hunters.

We oppose Federal classification and management of the timber wolf as an endangered species without the concurrence of the State of Minnesota—and further, it is our position that we oppose the classification of endangered by the Federal Government for any resident wildlife species without the concurrence of the affected State(s).

Thank you very much, Mr. Chairman.

At this time I would like to call on Mr. Stenlund for some additional comment, if this is satisfactory.

Mr. DINGELL. We will be happy to receive your statement, Mr. Stenlund.

Mr. STENLUND. Mr. Chairman and members of the committee, I am Milt Stenlund, supervisor of game for the department of natural resources in the northeastern part of Minnesota.

I would like to elaborate briefly on two points Mr. Casey brought up.

The first is the research that has been accomplished on the timber wolf in the State. I think this is quite an elaborate bit of research done by several agencies and several groups, all in fairly good cooperation with each other, and is probably one of the areas in which more research has been done on the classified endangered species than any other in the United States.

Some of this material began back as far as the 1930's when Sig Olson, the internationally recognized naturalist began a study of the timber wolf in the Superior Forest. This was carried on by myself in 1948 during a 5-year study in the Superior National Forest, and later in the 1960's it was continued by Dr. Mech, Dr. Van Ballenberghe, Dr. Frenzel of the University of Minnesota, and some of this research is continuing at the present time.

Of the people who have conducted research on the timber wolf in the Superior National Forest, four have been authors or been consulted during the completion of the management plan for the wolf in Minnesota.

We have a generally agreeable plan.

The second point I would like to cover, and this is one, I believe, that was brought up at the hearing yesterday, this is that more importance should be placed on the habitat of the endangered species.

I think many people fail to recognize that man is going to be much easier to control in reference to the timber wolf than is nature.

To further explain this, the timber wolves' current food in the Superior Forest is the whitetail deer.

During the early part of the century, much of that country, or a good part of it at least, was cut over and burned. As a result of this operation, we produced optimum deer habitat in the northern part of the State.

This was followed by optimum timber wolf numbers.

As the second-growth forest which was primarily aspen and birch grew to maturity, there was less and less available browse for the whitetail deer, and the deer herd began to decline. This decline is continuing.

As the second-growth forest reaches maturity and overmaturity and is beginning to die on the stump, this forest, which once produced our great whitetail deer herd, is gradually being replaced by what we call the Climax Forest in northern Minnesota.

As each one of these aspen or birch trees is replaced by conifer, we are losing deer habitat and, consequently, will lose timber wolf habitat.

While we may be concerned about the animal and greatly concerned about man's effect on the animal, I am convinced that we should be more concerned about the country, the habitat, in which the wolf lives.

For the past 4 years, the department of natural resources has conducted a habitat program in the northern part of the State, trying to improve habitat for wildlife, especially deer, ruffed grouse, and consequently benefiting the timber wolf, but we are not very optimistic that this plan is going to succeed.

Mr. Chairman, much of the country is too remote to work in. Much of the timber is unsalable. Much of it is completely inaccessible by vehicle and, as a result, as this forest grows to maturity, we are losing our whitetail deer habitat and our timber wolf habitat.

In any endangered species program, I would like the committee to consider the fact that the habitat in which the endangered species live could be far more important than protection of the animal itself.

Thank you.

Mr. DINGELL. Mr. Breaux?

Mr. BREAU. Thank you, Mr. Chairman, and thank you, gentlemen, for your testimony.

I find that your testimony points out several problems we have in the State of Louisiana almost to a tee.

Let me direct your attention to the point of the bills that we are considering that allows the State to run the programs if the Secretary determines the State has taken the proper steps to assure good, sound management practices.

What are your comments regarding that?

Mr. CASEY. Mr. Chairman and Mr. Breaux, unfortunately, even though we asked for copies of these bills, we did not get them until a few minutes before we arrived here. And so we had a very short time to look at these.

I think our position on this, on two bills, would be that we would go along with the statement that was presented to you, and as we have said in the statement presented to you yesterday by Mr. Gazlay from the State of Michigan, and that is it would be our position that we would concur, or we would not consider a species endangered unless it was concurred in by the State affected.

I am not familiar with the alligators in Louisiana, but I do believe, and we are of the opinion that in Minnesota we do have a healthy timber wolf population, as stated. I think our record will speak for itself, and anyone that is familiar with our past activities knows what we are doing, not only in timber wolf activities but in our overall management of fish and wildlife species.

I think the record of the State of Minnesota will stand by itself.

Mr. Chairman, this record will stand close examination, and we just do not concur with the timber wolf being placed on the endangered species list. It is not endangered in Minnesota.

Mr. BREAU. That is a good point, and I sympathize with you and point out that there is another provision of the bill which would allow the Secretary to designate the portion of the habitat or range of an endangered species.

In other words, he might be able, under the law as I read it, to designate one State in which the timber wolf is indeed endangered, and maybe because of good sound management practices in your State, he would designate it as not an endangered species as far as your State is concerned.

May I have your comment on that provision?

Mr. CASEY. Mr. Chairman and Mr. Breau, I believe the way I understand the bill, and I like it with what little chance we have had to examine it, this does not preclude the possibility of the Federal Government from usurping States rights.

And I believe that we would have to maintain our position and say that we could not agree that the timber wolf would be endangered unless it was concurred in by the State of Minnesota.

Mr. BREAU. And the problem that bothers me, and I agree that the States should have the primary and first responsibility in determining the management procedure for management of a species that is located within that State's boundaries, but what do we do from a national level with the States that do not have a good sound management practice?

What do we do with the States that have a bounty on the animal that is on the endangered species list?

The States with good management practices are having to pay the penalty for the States that are not up to par.

Mr. CASEY. Mr. Chairman, Mr. Breau, that is a good question. I think that perhaps we have found that the thing that has been very important for us is to make known our programs and our practices. And also I believe it is a matter of education, if you will, in whatever fashion that is at our disposal to make people aware of our situation and let them know what we are doing about it.

I think perhaps each individual State will probably have its problems convincing people or selling people on some of their programs because certainly people look differently on these things, unfortunately. I think over the years that I have been connected with our

department, which will be 39 years, we can see marked improvement in the acceptance of our programs and what we have done.

I think that many of these things that you come up with in the realm of fish or wildlife management, natural resource management, if you will, that oftentimes, one reason that they are not accepted is because the people do not understand them. And I think this is a real weakness, and it has been a weakness or was a weakness. I believe, in Minnesota, that we were woefully weak in our information and education.

This has been improved, Mr. Breaux, and this has been a particular and special duty of our people that are engaged in fish or wildlife management, our research people and biologists to spend as much time as they feel is necessary in the areas in which they work to get out and mingle with the people, attend meetings, publish something in a newspaper, have a column or something of that nature, let the people know what we are doing, and be willing to, you might say, expose themselves to the wrath of certain groups that definitely take an objection to something and be willing to go out and meet with these people and answer their questions and sympathize at times with them, if necessary, but always stand firm and maintain the position we certainly know what is practical and right from a sound management practice.

Mr. BREAU. Thank you, Mr. Casey.

You have been in the management business longer than I have been alive. You have done a great job at it.

Thank you again, and thank you, Mr. Chairman.

Mr. DINGELL. Mr. Studds?

Mr. STUDDS. No questions.

Mr. DINGELL. Mr. Potter?

Mr. POTTER. Just one question.

Both of you mentioned the question of habitat protection. There seems to me that this is an important, and perhaps the most important, element, although we concentrate on the more punitive aspects of man's interference with natural systems.

I am wondering if there are additional types of tools that we ought to furnish our ecosystem managers, if you will, to insure that at least agencies of Government act in a way that is more consistent with the protection of the ecosystems universally.

Mr. CASEY. I think that is absolutely correct, and I would like to have Mr. Stenlund comment on this, because he has done in Minnesota, what is considered to be nationwide, a real outstanding job in improving the habitat for wildlife, and particularly the deer.

I would like to have Mr. Stenlund comment on this, because he has had a good deal of experience in it. In fact, he has had much more than I have, and I think he could comment on this, and very interestingly.

Mr. STENLUND. Mr. Chairman, I think we are faced with basically two problems in habitat for endangered species.

Mr. Chairman, the first is the problem of disappearing habitat, which is common with some endangered species.

The other is the problem with changing habitat, which is common with the timber wolf.

In areas where we are losing forest habitat for an endangered species which is associated with forest wildlife, we are losing the forest

because of agricultural practices or development types, and this is a problem probably of land acquisition mainly, in restoring the area back to its original type of vegetation.

In the case of the timber wolf, we have the habitat, but the habitat is changing against it.

In other words, we do have enough public lands in northern Minnesota to provide habitat for the timber wolf, but at the present time we are at a loss to be able to manage that habitat in a way which will produce deer to feed the wolf.

Mr. POTTER. Why?

Mr. STENLUND. It is called natural succession toward a climax forest.

Mr. POTTER. That I understand, but it occurs to me you are not really at a loss so much as that you are not interfering with the natural progression toward your climax system of vegetation. You really need, I should think, the power to get into that, to go in and clear up some of these aspen forests.

Mr. STENLUND. This is what we have been attempting to do, but the plan is not very practical.

As I stated earlier, because of inaccessibility, because of the inability of the U.S. Forest Service to sell the timber in the areas which would reduce the vegetation to a pioneer stage, it is a problem of access, a problem of poor quality timber, a problem of extremely rough topography for Minnesota, a lot of rock.

Mr. Potter, it just does not lend itself to large scale timbering operations which would produce again the deer habitat.

Mr. POTTER. To what extent would you say you have a problem because the Forest Service is managing the forests to produce the maximum output of timber as opposed to encouraging the protection of any two species of animals?

Mr. STENLUND. I do not think, personally, the Forest Service is doing anything detrimental to the deer habitat.

Mr. Potter, their program actually is geared toward selling wood fibers, and in most cases this wood fiber is the type which, if removed, would actually cause our habitat to improve again, but the problem is the marketing. They just cannot sell enough of it, a big enough area, to bring the vegetation back to pioneering stage.

Mr. Potter, it is a problem of economics, that is what it is in the Superior.

Mr. DINGELL. Are they clearcutting, or are they going into selective cutting?

Mr. STENLUND. Most of it is clearcutting. Clearcutting is a proven pattern in Minnesota when they are cutting pulp wood. Clearcutting is essential if you are going to produce the most and the best quality deer habitat.

Leaving any prime cover in a cutover area reduces the amount of food that is produced, per acre.

Mr. DINGELL. How big a patch will they cut when they clearcut?

Mr. STENLUND. It varies greatly from 5 acres on up. Ten acres is a manageable tract. They will cut 20 or 30 acres, but here again, because of access there are very few, and because of the limited time of the year in which they can operate, very few sales are larger than 20 to 40 acres.

Mr. DINGELL. Do they cut in the wintertime?

Mr. STENLUND. They cut all year around, but most of it is in the wintertime.

Mr. DINGELL. Cut all year around and get it out in the winter?

Mr. STENLUND. They cut in the winter and get it out in the spring before breakup, and start the summer cutting just before June.

Mr. DINGELL. Do they drive downriver?

Mr. STENLUND. No, it is all railroad or truck hauling.

Mr. DINGELL. I thought that was a roadless area.

Mr. STENLUND. This is south of the roadless area.

Mr. DINGELL. What do they do in the roadless area, do they do any cutting in there?

Mr. STENLUND. A part of the roadless area is open to contract cutting, but the roads are temporary.

The roads are plugged after the operation ceases.

Mr. DINGELL. I see. The whitetail deer was not an original game animal in northern Minnesota in early days, was it?

Mr. STENLUND. No.

Mr. DINGELL. The prime game species was the woodland caribou and the moose, is that right?

Mr. STENLUND. Right.

Mr. DINGELL. And there are really very few left in the area.

Mr. STENLUND. Some of the expeditions into that country in the 1870's, the expedition up the north shore, did not see a single deer all summer.

Mr. DINGELL. The reason was the country was too rough and the food and habitat was bad, and the winter was too bad for the deer, and he had to spend his life south of that area.

Mr. STENLUND. All of Minnesota is on the margin of the whitetail deer. We suffer severely when we have a bad winter in Minnesota.

Mr. DINGELL. It can wipe the deer out, because north of there, in Canada, there is practically no whitetail deer.

What you are really saying is you need to manage deer to produce wolves, is that not right?

Mr. STENLUND. Right.

Mr. DINGELL. It is actually a management program.

Mr. STENLUND. We need a vegetative management program if we want to maintain the wolf at saturation numbers, which they are now.

Mr. DINGELL. You actually need some vegetation then to have essentially a management program in the area, do you not?

Mr. STENLUND. Actually, what we need is enough funds in the U.S. Forest Service to provide a wildlife program.

We cannot cooperate fully with the U.S. Forest Service because they lack the wildlife funds.

Mr. DINGELL. I have been looking at your statement, and the wolf you are talking about is the *canis lupus lycaon*.

Mr. STENLUND. Right.

Mr. DINGELL. I looked at appendix I and appendix II of the proposed convention, and that particular species of wolf is not on either.

Mr. STENLUND. It is the eastern timber wolf.

Mr. DINGELL. Neither one of the eastern timber wolves is on either of those.

In any event, it is not on either appendix I or II. I am curious why you would think that the timber wolf was covered by this bill.

Now, I am not telling you it is or is not. I want to get your thinking as to why the wolf would be covered under this bill.

Mr. STENLUND. Based on the information provided by the Department of Interior, we assume it is.

They provided us with the list today that showed the eastern timber wolf on it.

Mr. DINGELL. This is no trap, but in the treaty here, to the best of my knowledge, it is not on the list.

Mr. STENLUND. We have been acting on the basis of the so-called red book, and we found out today that is obsolete and has been for years, and we are learning a lot in Washington. The original red book of endangered species, the Department told us today, is obsolete.

They did provide us with a list today that included the eastern gray wolf, the eastern timber wolf, which is the species we are interested in.

Mr. DINGELL. So you are saying this species is on the U.S. list?

Mr. STENLUND. Yes.

Mr. DINGELL. But the legislation provides each of the bills as I read them, provides that there can be management programs, that the management programs will be in consultation with the States.

I am curious to know what is wrong with that.

Mr. STENLUND. We do not oppose that. The thing we are opposing is that the selection of the animals will be done only in consultation with the State.

Mr. DINGELL. Of course, my recollection is not very good, but as I recall, when the Forest Service went in and precluded the taking of wolves in the roadless areas and the other areas of the Superior National Forest, there was a great outcry from the Minnesota Department of Game.

Mr. STENLUND. Not from me, personally.

Mr. DINGELL. But there was from DNR, am I right?

Mr. STENLUND. Yes, sir; that is right.

Mr. DINGELL. I guess religion came rather late there.

Well, you folks up there in Minnesota do a good job. Occasionally, we have differences. I suspect we will have some significant differences over this particular piece of legislation.

I understand that you understand that this will not be for want of personal affection or regard for your overall labors. You do do a good job.

I happened to see your folks in Minnesota before this committee in connection with water problems.

In my view, you have a fine agency up there, though I happen to disagree with you on the question of how far we can go to give you folks an absolute veto over Federal programs on Government lands, and how to protect these endangered species.

Mr. CASEY. Thank you, very much, Mr. Chairman, for your kind words.

Mr. DINGELL. The Chair recognizes Mr. Eckhardt.

Mr. ECKHARDT. Thank you, Mr. Chairman.

I have one question, Mr. Stenlund, and I am asking this for information, not in any sense knowing the answer.

Mr. Stenlund, you were referring to clearcutting as being the more beneficial method of sustaining wildlife in an area.

Would you apply that generally to all areas of the country, or would there be a difference, say, between east Texas as for instance, and say, Minnesota?

What I have in mind there are rather wetlands in east Texas that maintain a considerable amount of vegetation in the forest, and the forest also produces a great amount of nuts and acorns of various types that seem to be good for wildlife foraging in that area.

When clearcutting occurs, it certainly does not increase that crop, and the question is whether or not it increases the verdant foliage enough to offset it.

What I am really asking is do your answers with respect to clearcutting apply to your part of the country, or generally?

Mr. STENLUND. No, they are not general. They are very specific.

In Minnesota, clearcutting as a cultural practice and wildlife improvement habitat technique would be applied almost only to the aspen, birch type, the black spruce type in the lowlands, and the jack pine type on the uplands.

When you get into the major hardwoods, such as the nut trees, selective cutting would be used. We have none of this in the northern part of the State.

Clearcutting as we practice it is very specific, and the reason it is beneficial to both the regeneration of the poplar stand or the aspen stand, and also for wildlife is that the species of trees which provide the best habitat for the most important wildlife in Minnesota from the recreational standpoint which the deer, the grouse, and the beaver are, those are trees that need sunlight to grow.

Any time you eliminate sunlight from an area you are reducing the capability of that vegetation to produce at its utmost.

The species I have mentioned, the aspen, birch primarily, and the jack pine, are sunlight lovers, and in order to produce the optimum is to allow as much sunlight as possible, and the only way you can do this is by clearcutting.

Mr. ECKHARDT. The thing that more or less made me ask the question was that some of the more progressive timber companies, and those who are concerned with conservation as well, have given up clearcutting in the east Texas areas.

For instance, Temple Industries does not, I think, clearcut. They cut selectively, but they are operating in a rather mixed area of various hardwoods, including a dozen varieties of oak, I suppose, hickory, pecan, various other nut trees, some walnut, and apparently they have found that both from profitable production of timber in that kind of country, and also from the standpoint of maintaining maximum game in that country, which would, of course, include things like squirrels, that selective cutting is better.

Mr. STENLUND. I would agree with that.

Mr. ECKHARDT. Thank you.

Mr. DINGELL. Mr. Rountree?

Mr. ROUNTREE. No questions.

Mr. DINGELL. Gentlemen, the committee thanks you. We hope you will look with sympathy on our efforts to help you.

We do thank you for coming all this way.

Mr. CASEY. Thank you, very much, Mr. Chairman.

Mr. DINGELL. Our next witnesses are Mr. Robert C. Hughes, chair-

man of the Sierra Club's National Wildlife Committee, and Mr. Richard Frank of the Sierra's Center for Law and Social Policy.

Gentlemen, you may proceed in your own way.

Mr. Breaux, will you chair this hearing? I have to leave for a few moments.

Mr. BREAUX. Surely, Mr. Chairman.

Gentlemen, you may proceed.

STATEMENT OF ROBERT C. HUGHES, CHAIRMAN OF THE SIERRA CLUB'S NATIONAL WILDLIFE COMMITTEE, ACCOMPANIED BY RICHARD FRANK, CENTER FOR LAW AND SOCIAL POLICY OF THE SIERRA CLUB

Mr. HUGHES. Mr. Chairman and members of the committee, I am Robert C. Hughes, chairman of the Sierra Club's National Wildlife Committee. It is a pleasure to be with you again today. With me is Mr. Richard Frank, who is associated with the Center for Law and Social Policy in Washington.

The Sierra Club is an international environmental organization with 140,000 members founded in 1892 to explore, enjoy and preserve the Nation's forests, waters, wildlife and wilderness.

We wish to thank you for this opportunity to again present our views on endangered species legislation. Mr. Frank has been actively working with the Sierra Club for more than a year on wildlife matters, including the recently completed Convention on International Trade in Endangered Species of Fauna and Flora. He will present our statement on this legislation.

There is no doubt that many species and subspecies of wildlife are endangered, and that others are approaching that status. The reasons are varied—habitat destruction, excessive exploitation, evolution and others can be cited.

Our generation can see the world's wildlife as it currently exists. This has been accomplished by sound management, wise nonintervention, our inability to achieve completely efficient exploitation and by dumb luck. Without the extensions this legislation is intended to supply, active law enforcement, actively used treaties, and increased public education we will insure that future generations will be looking in vain for wildlife that currently lives on Earth.

This legislation was considered last year, but failed to reach the President's desk. We cannot afford additional delay. There can be no excuse for either House failing to pass and agree on a strong Endangered Species Act of 1973.

Mr. Chairman, after Mr. Frank finishes with his statement, I would like to say a few words as to the gentleman from Minnesota's statement.

Mr. BREAUX. Mr. Frank, you may proceed.

Mr. FRANK. Mr. Chairman and members of the committee, I am Richard Frank of the Center for Law and Social Policy, a public interest law firm in Washington, D.C.

Both Mr. Robert Hughes, chairman of the national wildlife committee of the Sierra Club, and I appear before you at the request of the committee, to provide the advice and views of the Sierra Club, on two bills, H.R. 37 and H.R. 4758, which would become the Endangered Species Conservation Act of 1973.

The Sierra Club is a growing international environmental organization of 140,000 members which has long been interested in the conservation and preservation of the Earth's natural resources.

The Sierra Club has a particular concern in seeing that the development of laws, whether domestic or international, results in a sensible balance between environmental protection and the needs of progress.

Because of our particular interest in wildlife, we are pleased to respond by this testimony to the request of the chairman to provide our advice on bills involving endangered species protection.

We strongly support the passage of new legislation covering endangered species.

The Endangered Species Conservation Act of 1969 has many commendable provisions, but that law, even when combined with other existing legislation, is inadequate to provide for the conservation protection and propagation of threatened species. The inadequacies of existing legislation, which must be remedied by new legislation, will be discussed below.

Both H.R. 37 and H.R. 4758 have provisions we believe should be enacted, but both need improvement.

Since the bills are similar, we believe either could be the basis of the ultimate law, but let me emphasize either would need modification before we could support its passage.

The following are specific aspects of the bills on which we wish to comment:

1. SECTION 2(a) OF H.R. 37 AND OF H.R. 4758

The oratory language in section 2(a) of both bills suggests that the purpose of our international agreements relating to endangered species is to conserve and protect these species "where practicable."

We believe most international agreements are not expressly limited by a principle of practicality and, therefore, that the words "where practicable" should be eliminated from section 2(a).

2. SECTION 2(b) OF H.R. 37 AND SECTION 2(a) OF H.R. 4758

Each bill applies both to species which are presently threatened with extinction and to those which are likely to become threatened with extinction within the foreseeable future.

The present law relates only to the first category. We support the inclusion of this second category of species which are not presently threatened but which are likely to become threatened.

In other words, the Government should not begin regulation only after a species is threatened, with all of the dangers inherent in such a condition, but should take action earlier when necessary.

This concept has been adopted in the International Convention on International Trade in Endangered Species of Wild Fauna and Flora, which was negotiated earlier this month in Washington, D.C.

We assume the addition of a second category is not intended to permit presently listed first category species to be downgraded to second category, but rather to allow the addition of species not presently listed but which could become endangered in the foreseeable future.

3. SECTION 2(C) OF H.R. 37 AND SECTION 2(b) OF H.R. 4758

These subsections declare the policy of Congress that all Federal Agencies, not just those primarily responsible for endangered species, are to seek to protect endangered species.

This same concept is later repeated in section 5(d) of H.R. 37 and section 3(d) of H.R. 4758.

We strongly support extending this obligation to all agencies.

Section 2(b) of H.R. 4758 limits the obligation of other agencies to the extent that protection of endangered species is "consistent with the primary purposes of such" agencies. That qualifying language, which does not appear in H.R. 37, could be construed to be a declaration of congressional policy that other agency purposes are necessarily more important than protection of endangered species and would always prevail if conflict were to occur.

Consequently, that language could be used as a basis for other agencies' failing to take into account the purposes of the act resulting from these bills when fulfilling their mandates.

We strongly recommend that the language in section 2(c) of H.R. 37 be adopted rather than the language in section 2(b) of H.R. 4758.

4. SECTION 3(8) OF H.R. 37 AND SECTION 2(d)(1) OF H.R. 4758

These sections define the wildlife which is covered by the bills. The definitions of wildlife are more expansive than the definition in the 1969 act, and we support increasing the scope of the endangered species legislation in this fashion.

5. SECTION 3(6)(b) AND SECTION 11 OF H.R. 37

H.R. 37 refers to flora in its definitions and requires a report by the Secretary of the Smithsonian Institute within 1 year on endangered flora and methods of providing adequate protection of it.

H.R. 4758 contains no reference to endangered flora.

We strongly urge that Congress take steps now to regulate traffic in species of endangered flora. There is adequate knowledge at present so that a system similar to the one envisioned in these bills for wildlife could now be put into effect for flora.

The International Convention on International Trade in Endangered Species of Wild Fauna and Flora covers flora. Most governments thus believe the time is ripe to regulate species of endangered flora and, of course, we will need to do so to implement that convention.

In sum, regulation of endangered flora should be implemented now; it should be covered by these bills or in other legislation.

6. SECTION 4(a) OF H.R. 37 AND SECTION 2(C)(1) OF H.R. 4758

Section 4(a) of H.R. 37 requires consultation with interested persons and organizations by the Secretary in connection with deciding which species are endangered.

The similar provision in H.R. 4758 provides for such considerations "to the extent practicable."

As we will point out later, we have had some difficulty in obtaining adequate information and in consulting adequately with the Department of the Interior on endangered species matters.

Because of this, we favor elimination of the term "to the extent practicable" in H.R. 4758.

If maintained, that provision would be used as a basis for inhibiting legitimate public participation in the decisionmaking process on endangered species. That, of course, was a concern just expressed by the gentlemen from Minnesota.

Section 2(c)(1) of H.R. 4758 states that a species should be regarded as endangered whenever the Secretary "in his discretion" so determines.

The similar provision in section 4(a) of H.R. 37 does not include the term "in his discretion."

That term, is maintained in the law, might incorrectly be said to imply that the Secretary's action is not reviewable by the courts. The term "in his discretion" should be deleted if that subsection of H.R. 4758 is to be used.

7. SECTION 4(b) OF H.R. 37 AND SECTION 3(C)(2) OF H.R. 4758

Section 4(b) of H.R. 37 provides that the rulemaking provisions of the Administrative Procedures Act, 5 U.S.C. 553, are applicable to any regulation under that subsection.

The similar subsection in H.R. 4758 provides that those procedures in 5 U.S.C. 553 are not required for the republication of a species presently threatened with extinction. We believe the act can be implemented more efficiently if the language in H.R. 4758 is adopted so that an endangered species can be published as such without the rulemaking procedures in the Administrative Procedure Act.

We support the language in both bills which permits a person to petition the Secretary to add a species to the list. We believe such a provision to be essential.

As presently drafted, action by the Secretary denying such review would be subject to judicial review; we believe it essential that court review be available.

We also believe the present language which provides for review "only if" the Secretary concludes substantial evidence has been presented by the petitioner should be changed to provide for review upon the petition of an interested person "unless the Secretary finds and publishes his finding that substantial evidence warranting a review has not been presented."

8. SECTION 5 OF H.R. 37 AND SECTION 3 OF H.R. 4758

These sections provide authority for land acquisitions to carry out programs of conserving, protecting, restoring, and propagating endangered species.

Such authority, which has now lapsed, is essential for an effective conservation program and, therefore, we strongly support these provisions.

9. SECTION 6 OF H.R. 37 AND SECTION 4(d) OF H.R. 4758

We support the Federal-State relation envisioned by these bills. The Federal Government has authority to regulate endangered species but more restrictive State laws remain in effect.

This was the subject just addressed by the gentlemen from Minnesota. Under the proposed legislation, the Secretary would have to consult with the States before putting an endangered species on the list if that State is an interested party.

10. SECTION 7(a) OF H.R. 37 AND SECTION 4(a) OF H.R. 4758

These bills comprehend exports as well as imports, and we support that addition to the law.

11. SECTION 8 (a) AND (b) OF H.R. 37 AND SECTION 5 (a) AND (b) OF H.R. 4758

These bills, like existing law, provide for exceptions when species are being used for scientific purposes, or when the implementation of the law would cause "undue economic hardship."

In the past, the Department of Interior, in our view, has abused these exception provisions and has created an unfortunate and possibly disastrous loophole in the law.

The undue economic hardship exception was not intended to be used for trophy hunters or persons importing pets. Nonetheless, according to information we have received, from April 1, 1972, through September 7, 1972, 101 permits allowing endangered species to be imported were issued. These permits authorized importation of 42 live animals and 112 animal trophies. Only five or six applications for permits were denied.

The Department of Interior has apparently granted a substantial number of these permits to persons who wished to import the trophies of an endangered species they had killed, if a safari contract was entered into before the listing, and even though the killing may have occurred after the listing.

Permits have also been granted to persons who wished to import endangered species as pets or for resale, thus taking the animals out of their natural habitat and preventing propagation.

We protested this action to the Department of Interior. We asked it to explain the reason for granting these exceptions, to allow us to inspect applications for economic hardship permits, and to allow us to review determinations for economic hardship.

The Department of Interior has not responded adequately to these requests. It has not articulated its position on this matter. It has allowed no inspection of applications, and it has provided no hardship determinations to us.

For the record, I would like to submit copies of our correspondence with the Department of Interior.

Mr. BREAUX. Without objection, they will appear in the record at this point.

[The correspondence referred to follows:]

CENTER FOR LAW AND SOCIAL POLICY,
Washington, D.C., December 8, 1972.

Mr. NATHANIEL REED,
Assistant Secretary,
Department of the Interior,
Washington, D.C.

DEAR MR. REED: On behalf of the Sierra Club, we are writing to urge that you personally review certain decisions taken by offices under your jurisdiction relating to the importation of trophies and pets of those species listed as threatened with worldwide extinction under the Endangered Species Conservation Act of 1969.

Section 3 of the Endangered Species Conservation Act of 1969, 16 U.S.C. § 668cc-3, provides, *inter alia*, that whenever the Secretary of the Interior determines that species or subspecies of fish or wildlife are threatened with worldwide extinction, he shall publish a list of such endangered species in the Federal Register. Any person thereafter importing those species into the United States is subject to civil and criminal penalties.

According to the House of Representatives Subcommittee which considered this legislation, the above-mentioned provision was "designed primarily to protect many species of animals which are endangered because they are in great demand for novelty uses or because their skins provide specialty or decorative wearing apparel such as skins of the spotted cat family." *Hearings on H.R. 248 . . . H.R. 4812 Before the Subcom. on Fisheries and Wildlife Conservation of the House Comm. on Merchant Marine and Fisheries*, 91st Cong., 1st Sess., ser. no. 91-2, at 1 (1969) [hereinafter cited as *Hearings*].

The Act includes a limited exception, section 3(b), 16 U.S.C. § 668cc-3(b), to provide relief in certain cases of "undue economic hardship." Section 3(b) provides:

"In order to minimize undue economic hardship to any person importing any species or subspecies of fish or wildlife which are determined to be threatened with worldwide extinction under this section, under any contract entered into prior to the date of publication of such determination in the Federal Register of such species or subspecies, the Secretary [of Interior], upon such person filing an application with him and upon filing such information as the Secretary may require showing, to his satisfaction, such hardship, shall permit such person to import such species or subspecies in such quantities and for such periods, not to exceed one year, as he determines to be appropriate." (Emphasis added.)

On March 30, 1972, the Secretary of the Interior determined (37 Fed. Reg. 6476) that certain spotted cats—cheetah, leopard, tiger, snow leopard, jaguar, ocelot, margay, and tiger cat—are threatened with worldwide extinction. Thus, under section 3 of the Act, a person cannot import these animals without subjecting himself to civil and criminal penalties. However, the Department of the Interior, through the Bureau of Sport Fisheries and Wildlife, the Office of Endangered Species, and Division of Management and Enforcement has vitiated the effect of this decision by indiscriminately granting "undue economic hardship" permits for large numbers of these species without the required showing of hardship and contrary to the Act and contemporaneous interpretation of the Act by the Department of the Interior as embodied in the implementing regulations.

According to information obtained at the Department of the Interior, from April 1, 1972, through September 7, 1972, 101 permits allowing endangered species to be imported have been issued. These permit authorized importation of 42 live animals and 112 animal trophies, which may include skins, skulls, and other parts. Only five or six applications for permits were denied. The Department of the Interior has apparently granted a substantial number of these permits to persons who wish to import the trophy of an endangered species they have killed, if a safari contract was entered into before the listing and even though the killing may have occurred after the listing. Permits have also been granted to persons who wish to import endangered species as pets or for resale, thus taking the animals out of their natural habitat and preventing procreation.

The legislative history of the "undue economic hardship" exception clearly reveals that the provision was intended only to provide relief to commercial enterprises that would suffer extreme financial difficulties if the listing of a species interrupted the performance of pre-existing contracts for the importation of hides. Statements of Mr. John S. Gottschalk, Director of the Bureau of Sports Fisheries, Mr. James R. Sharp, Counsel to the American Fur Merchants Association and Arnold Meyer, Legislative Representative, Amalgamated Meat

Cutters and Butchers Workmen, AFL-CIO, in Hearings, *supra*, at 38, 91st Cong., 1st Sess. 7 (1969). The exception was written into the statute at the behest of, and to provide relief for, the fur and leather industries because of seasonal contracts that could be concluded up to 8 to 12 months in advance. *Hearings, supra*, at 117-18. Thus, if the listing of a species would cause undue financial hardship because of this time lag, the exception could be used. The industry sought the exception on the following basis: "[An old bill] would have left numerous brokers, dealers, manufacturers, processors, and other members of the fur industry in the position of having to destroy all endangered species fur hides in their possession as of the date of the publication of the . . . list. That inequity might well have bankrupted a number of legitimate fine business organizations. But we have brought it to the attention of the sponsors of the bill and the legislative counsel of the Secretary of the Interior . . . and H.R. 4812 incorporates language to prevent that from happening. *Hearings, supra*, at 105. Even in this commercial area, the grant of permits was to be restrictive. The final report of the Senate Commerce Committee, in addition to instructing the Secretary of the Interior to guard against contract signing "suspiciously close" to the listing date, makes clear the committee's expectation that the Secretary will "carefully scrutinize" the commercial importer's application. S. Rep. No. 91-526, 91st Cong., 1st Sess., 1969 U.S.C.C.A.N. 1418.

At no time during the extensive discussion on this subject was it suggested by the Executive branch or members of Congress that the "undue economic hardship" would be used to allow persons, after a species was listed as endangered, to go on a safari (even if contracted for earlier), kill those animals for pleasure and import a trophy, or to import pets. At no time was it implied that any conceivable effect of applying the law to a trophy hunter or pet owner would be considered "undue economic hardship"; quite the contrary, the effect was business bankruptcy.

Moreover, even the contemporaneous interpretation of the Act by the Department of the Interior, the agency charged with the responsibility of administering the Act, is contrary to the present administration of this limited exception. The regulations promulgated by the Department of the Interior, found in 50 C.F.R. part 17, specify the items to be included in an application for an undue economic hardship import permit, termed a "Commercial permit" to import for "commercial purposes" in the applicable regulation, 50 C.F.R. § 17.12(a). These items include, among others, a copy of the contract under which the species are to be imported, copies of previous contracts for the importation of the same or similar species for the immediately preceding calendar year (so that the Department of the Interior can tell if the commercial importer has been inordinately signing contracts in anticipation of listing), and a statement of why non-fulfillment of the contract in question would lead to economic hardship, with all supporting documents.

Sporadic trophy hunters could not supply these items. Trophy hunters will rarely have a pre-existing contract for subsequent delivery of an acquired species for the simple reasons that the animal will not yet have been taken, and the contract is essentially one to go on a safari. The requirement of last year's contracts could not be applied to trophy hunters because of the infrequency of any particular person's hunting. And, as noted before, a showing that any economic hardship to the invariably affluent trophy hunters could be "undue" would hardly be possible in the context of this legislation. Indeed, the non-commercial trophy hunter is not prevented from going on the safari, but is merely precluded from importing the endangered species he has killed.

As a matter of policy, allowing the imports of these endangered species in the quantities thus far permitted by the Department of the Interior is unsound and defeats the purpose of the Act. The populations of certain listed endangered species are exceedingly low, and it becomes increasingly clear that permitting importation of those species (and thus failing to reduce the incentive for killing) even for a limited time and for limited numbers could render them extinct. The Department of the Interior, in its news release of Thursday, February 3, 1972, quotes a figure of 400 snow leopards that are estimated to be the lone survivors in the entire Himalaya Mountains. There are estimated "to be only perhaps 40 Caspian tigers left in the world, and no more than a dozen Javan tigers." Operation Tiger Seeks Million To Save Species, N.Y. Times, November 2, 1972. Unfortunately, the rarer the animal, the more likely the predator will be a trophy hunter. This illustrates the extreme care that must be exercised so that the

limited exceptions in the Act are not allowed to swallow the general rule—non-importation of endangered species.

We cannot overemphasize the importance of your responsibility in this area. Perhaps Judge Mansfield, in upholding New York's Mason law, best expressed the finality of a failure to protect these endangered species :

"Extinct animals, like lost time, can never be brought back. They are gone forever. Since 1600 A.D. the world has destroyed for all time 130 animal species and 288 subspecies." *Palladio, Inc., v. Diamond*, 321 F. Supp. 630 (S.D.N.Y. 1970), *aff'd*, 440 F. 2d 1319 (2d Cir.), *cert. denied*, 404 U.S. 983 (1971).

We thus urge that you interpret the Act properly so that the import of trophies or pets does not fall within the "undue economic hardship" exception. We would appreciate your informing us by December 20, 1972, whether or not you will adopt the above interpretation with respect to endangered species presently listed, and to subsequent listings. If you are unprepared to stop the issuance of permits for the import of trophies and pets, we would appreciate: (1) your explaining why you believe these items properly fall within the exception; (2) your providing us with copies of any standards used to interpret the "undue economic hardship" exception; and (3) your listing each permit that has been issued since enactment of the Act to allow the import of a trophy or pet, with a statement of what "undue economic hardship" each applicant would have suffered if the permit had not been granted.

Mr. Malcolm Jacobson, of the Center for Law and Social Policy, has previously discussed the above matter with members of your staff. He had requested certain information, but his requests have not been fully complied with. We therefore again request pursuant to Department of the Interior regulations, 43 C.F.R. §§ 2.1 and 2.2 that (1) we be allowed to inspect all applications for economic hardship permits and any correspondence or documents relating thereto; and (2) you indicate whether determinations of "undue economic hardship" are articulated in writing, and, if so, we be allowed to inspect each relating to a trophy or pet.

Finally, we understand that applications for import permits by persons whose ultimate purposes of importation are zoological, educational, scientific, and propagational for preservation purposes are being granted under the "undue economic hardship" exception (e.g., import permits ES-160, 163, and 172). Another statutory exception, 16 U.S.C. § 668cc-3(c), explicitly pertains to imports for these purposes, and therefore is the only proper exception to be used for such imports. We urge that you cease using the "undue economic hardship" exception for these imports, and would appreciate being informed of your decision on this matter. If you intend to continue to use the "undue economic hardship" exception for these scientific imports, please inform us of the reasons you believe the exception can be so used and provide the standards that are used by the Department in evaluating the "undue economic hardship" to applicants in the above categories.

Sincerely yours,

RICHARD A. FRANK.

CENTER FOR LAW AND SOCIAL POLICY,
Washington, D.C., March 21, 1973.

E. U. CURTIS BOHLEN,
Deputy Assistant Secretary for Fish and Wildlife and Parks, U.S. Department of Interior, Office of the Secretary, Washington, D.C.

DEAR MR. BOHLEN: Thank you so much for your letter of January 22, 1973, in response to my earlier letter inquiring about imports of trophies under the "economic hardship" clause of the Endangered Species Conservation Act of 1969.

In your letter you mention that the Department is in the midst of a detailed study of the import provisions of the Act, and that you are investigating all procedures that have been followed in the past and intend to establish strict standards for the future. You state that when the study is finished, you will send me a fuller reply to my questions.

We have been asked for comments and technical advice in connection with endangered species legislation presently before Congress. In order to provide that advice, we would like to have answers to the questions requested in December 8 or a copy of your study if that study answers the questions. We hope that the study is completed or will shortly be completed, and that you will send us a copy and respond to the questions. If the study is not completed by April 15, we would appreciate your answering our letter of December 8 at that time as best you can so that we can utilize this information in connection with our advice on the pending legislation.

In my letter of December 8, I urged that the Department of Interior adopt the interpretation that imports of trophies or pets do not fall within the economic hardship exception. You replied that you could not give a categorical answer as to all future listings, but that you could assure me "that as to species presently listed we intend to adopt such a restrictive interpretation." I have interpreted your remark to mean that, as of January 22, 1973, the restrictive interpretation would be applied to then listed species, and that imports of trophies or pets would thus not be permitted under the economic hardship exception. I would appreciate your confirming my interpretation of your statement if your full response to our letter of December 8 does not clarify the issue.

We are, of course, pleased that you share the common objective of giving maximum protection to all endangered species. In this spirit of cooperation, we look forward to a response from you by April 15.

Sincerely yours,

RICHARD A. FRANK.

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., January 22, 1973.

Mr. RICHARD A. FRANK,
Center for Law and Social Policy,
Washington, D.C.

DEAR MR. FRANK: I am responding to your letter of December 8 to Assistant Secretary Reed concerning imports of trophies under the "economic hardship" clause of the Endangered Species Conservation Act of 1969.

We are in the midst of a detailed study of the import provisions of the Act. We are investigating all procedures that have been followed in the past and intend to establish strict standards for the future.

You asked specifically whether or not, with respect to endangered species presently listed and those to be listed subsequently, we will adopt the interpretation that imports of trophies or pets do not fall within the "undue economic hardship" exception. Until our study is completed I cannot give you a categorical answer as to all future listings, but I can assure you that as to species presently listed we intend to adopt such a restrictive interpretation. In addition, we do not intend to use the "economic hardship" exception to permit imports for zoological, educational, scientific, or propagational purposes.

Let me emphasize that we share wholeheartedly with you the common objective of giving maximum protection to all endangered species. As soon as our study is finished, we will send you a fuller reply to your questions.

Sincerely yours,

E. U. CURTIS BOHLEN,
Deputy Assistant Secretary for
Fish and Wildlife and Parks.

Mr. FRANK, I believe this correspondence will demonstrate that the Department of Interior has been violating the purpose and spirit of the 1969 law and has not been forthcoming with persons attempting to seek information and question Government action.

I cannot overemphasize the importance of not permitting unreasonable exceptions on the grounds of economic hardship. The rarer and more endangered the animal, the more likely a trophy hunter will seek him, and the more damage that a killer will do.

We are not against trophy hunting. We are merely against trophy hunting of endangered species.

If you choose to permit the economic hardship provisions in the present bills to remain, they must be changed to provide the following:

(a) Before any permit can be granted on grounds of economic hardship, the Secretary must list in the Federal Register the fact that someone has applied for such a permit and must allow for comment from the public before authorizing the permit.

(b) The application for the permit and all relevant papers must be available for public inspection.

(c) The reasoned decision to grant an economic hardship permit must be based on a public record and must be published in the Federal Register.

(d) We do not believe that trophy hunters or pet importers should be eligible for the economic hardship exception.

Whether they are or not, the undue economic hardship provision should apply only to the import of wildlife killed before the listing. In other words, a trophy hunter or anyone else should not be able to contract for a safari or a kill before the listing, and then be encouraged to undertake the kill after the listing by the knowledge he can import the trophy.

Of course, one can argue that the conclusion of a contract for a safari before the listing may result in some economic loss or loss of pleasure if the applicant is discouraged from killing the endangered species by a subsequent prohibition on import.

It is our view that when you balance the importance of that economic loss or loss of pleasure with the damage done by encouraging a kill of an endangered species after its listing, it is clear that we should not permit the bill. This is especially true on the rare animals.

(e) Under the bills as presently drafted, exceptions for scientific purposes or propagation in H.R. 37—or for zoological, educational, or scientific purposes under H.R. 4758—will be allowed only if the Secretary determines that allowing the import will not adversely affect the survival or reproductive capacity of the species, et cetera.

We believe that some balancing must be made with respect to imports for economic hardship. Consequently, a provision should be added requiring that the Secretary will permit imports, et cetera, to minimize undue economic hardship only if such undue economic hardship is proven and only if he also determines that the policy of allowing such imports for the immediate applicant and future applicants in the same situation would not adversely affect the survival of the species or its reproductive capacity.

The present language in H.R. 37 which grants the Secretary authority when he makes a finding "to his satisfaction" or "if he determines would be appropriate" and similar language in H.R. 4758 is too vague and these phrases should be deleted.

SECTION 8 (a) OF H.R. 37 AND SECTION 5 (a) OF H.R. 4758

Under H.R. 37, the Secretary may allow exceptions in imports of species threatened with extinction for scientific or propagation purposes, while under H.R. 4758 an exception can be given also for zoological purposes.

We believe zoos should be able to import such species only if propagation or enhancement of survival is also a purpose.

We, therefore, recommend that the language in section 8(a) of H.R. 37 be used or that section 5(a) of H.R. 4758 be amended to delete the word "zoological" in the fourth line of that subsection.

13. SECTION 9 (g) OF H.R. 37

We favor an importer registration requirement such as that found in H.R. 37 but not in H.R. 4758.

14. SECTION 4(C) OF H.R. 4758

We support the requirement that imports of fish and wildlife must come through designated ports.

However, the provision requiring this includes an exception for shellfish and fishery products imported for commercial purposes. We are concerned that this exception could allow a substantial loophole in effective enforcement of the law. We suggest that any such exemption not apply to any endangered species of shellfish or fish.

15. SECTION 10 OF H.R. 37

The International Convention on International Trade in Endangered Species of Wild Fauna and Flora is, by and large, an effective agreement. However, it does not resolve the problem of the continued slaughter by Japan, the Soviet Union, and Norway of threatened whales species. The International Whaling Commission has proven itself incapable of handling this issue.

We urge that you consider including in the bill a directive that the Secretary of State convene an international conference to promote the conservation and protection of threatened marine mammals. We believe a new forum and added awareness of the problem cannot but help assist progress in this area.

Thank you.

If the committee has any more specific questions, the Sierra Club would be happy to respond to those now or later in writing.

Mr. Hughes has now a couple of additional comments about the problem in Minnesota.

Mr. DINGELL. We thank you for a very helpful statement.

Mr. Hughes, do you have some additional comments?

Mr. HUGHES. Very briefly, Mr. Chairman, a couple of points that the gentlemen from Minnesota raised with the timberwolf.

One which we are trying to set forth in New Jersey is that game classification is not needed to manage an animal, and it is obvious that the concern in Minnesota is with preservation of a larger forest deer herd than, I believe, with the preservation of the wolf.

It has always been an unsound wildlife management practice to manage one species at the expense of another or at the expense of the habitat.

We would prefer to trust in the judgment of this committee and in a central authority on the Federal level than to 50 local governmental agencies which are much more susceptible to local pressures and prejudices.

Mr. DINGELL. Gentlemen, the committee thanks you for a very helpful statement.

Mr. Breaux, any questions?

Mr. BREAUX. Thank you, Mr. Chairman.

Mr. Hughes, in your opinion, who has the primary responsibility for game management in a State, the Federal Government or the local State government?

Mr. HUGHES. In game management, the States.

Mr. BREAUX. In talking about Minnesota, is it not better to have a central body managing it than have the States do it?

Mr. HUGHES. I am talking about endangered wildlife.

Mr. BREAUX. It is more proper to have endangered species managed at one central level than having that endangered species managed from a local level?

Mr. HUGHES. No, I see no reason why the 50 States cannot do the management as the bills would provide for, so long as the ultimate authority rests with some central coordinating body so that we have a consistency in this management and we do not have one State exploiting an endangered species and another State protecting it across the border.

Mr. BREAUX. Thank you.

Mr. DINGELL. Mr. Eckhardt.

Mr. ECKHARDT. Thank you, Mr. Chairman.

There is an interesting rather innovative provision in the Product Safety Act which might answer some of the questions that you have raised with respect to the Interior Department's failing to act, or act properly, in certain cases.

I know of no other act in which this is provided, but generally it says when the agency has not addressed itself to the purposes of the act in accordance with the act's terms, a civil suit may be brought by any interested party to require the agency to take action.

It does permit the court to direct what action, but it permits an organization as, for instance, the Sierra Club, or some of its members, if we were considering an analogous provision here, to call upon the agency to move in the field, not necessarily to come out with a decision favorable to the contention of the court but, at least, to address the field in accordance with the terms of the act.

It occurs to me that something like that, and perhaps a right to intervene after notice of an exception, ought to be granted, and might be a rather useful tool in enforcing the real purposes in this act.

Mr. FRANK. Mr. Congressman, I think that is an exceptionally fine idea. We will support it and we hope you will promote it.

If you do decide to promote it, we will be there prepared to intervene.

The purpose of such a provision would be to see that they act, not necessarily act the way we want them to, but to see they fulfill the mandate in the law one way or the other.

Mr. ECKHARDT. I think this provision in that bill arises from a growing concern on the part of people who are supposed to be the recipients of help under acts protecting the environment, protecting consumers and protecting the people in various different categories, that sometimes the syndrome of the possum guarding the chicken coop is applicable to the administrative agencies, and maybe a little self-help will keep the representative of the public interest really representing the public interest.

I certainly share your view.

Mr. FRANK. Thank you, sir.

I agree again. I think the gentlemen who expressed concern about the timberwolf might also agree. That is, they would like the opportunity to force the agency to take something off the list [if, in fact, the agency should take the species off the list] or, at least, to force the agency to do what it must do under the law procedurally. Similarly, we would like the opportunity to petition the agency to put something on the list.

I agree with you 100 percent, Mr. Eckhardt.

Mr. ECKHARDT. Thank you, sir.

Mr. DINGELL. Mr. Studds?

Mr. STUDDS. No questions.

Mr. DINGELL. Mr. Potter?

Mr. POTTER. Mr. Frank, on page 3 of your statement, you assume—you said the addition of a second category is not intended to prevent presently listed category 1 animals to be downgraded.

I am not sure that that assumption is shared by the Department of Interior.

My impression is that they have put some of the animals on the existing category 1 list on the basis that this was all they could do, and it is my impression that some of them probably will be moved down.

Mr. FRANK. This may have been phrased inartistically, Mr. Potter.

I agree a species on list 1 if, in fact, it should be downgraded, can be downgraded to list No. 2. However, I hope the addition of this second category was not intended merely to provide a basis for downgrading list 1 animals and will not generate an intensified effort to put some animals on list 2 that should remain on list 1.

It seems to me the more important problem is not the downgrading, but the availability of a new category for species that need protection but do not truly qualify for list 1.

Mr. POTTER. On page 5 you refer to the flora problem.

Here and elsewhere, I would urge you at your earliest convenience to provide us with language that will have the effect of implementing the recommendation which you make in the legislation.

Some of them, obviously, you have done where you said strike "in his discretion," and "where practicable," and your suggestions are practically universally sound.

Mr. DINGELL. The Chair wants to reiterate Mr. Potter's request with regard to language relative to flora.

I must confess we included study language in H.R. 37 because we had no means of drafting an immediate appropriate language to handle flora.

If you have some suggestions, we will appreciate it.

Mr. POTTER. Your remarks on the potential abuse on the economic hardship exemption were useful.

Last year, we were told by Interior that there really were no problems and it was unnecessary to provide any sort of more extensive public review.

I share with you the view that forcing a Government agency to operate in a fishbowl can only be beneficial; painful to the agency, but beneficial to the animals concerned.

Mr. FRANK. We are not against trophy hunting. Trophy hunting may be a perfectly acceptable pastime.

However, we are against trophy hunting of endangered species, and we do not believe trophy hunting imports properly come within the economic hardship exemption.

That is our major point.

A second point is that, as you mentioned, there is a fishbowl problem here. The Department of Interior has been keeping information from us. I do not know whether they are substantially right or wrong,

but I always have an inclination to believe when they are keeping information from us, there is some reason they are doing it.

We would like to be able to get hold of that information if, in fact, they are going to give these exemptions out.

Mr. DINGELL. I have a problem here.

Let us take the walrus. That walrus, if shot by a native village for dog food, is going to occasion, first of all, the killing of a female walrus, probably during the time she has her pup.

This is going to mean that her pup is going to die. It means the natives will take an awful lot of female walruses and we will lose a goodly percentage of them.

The walrus, any one of those walruses, is not going to be of much value to the natives; right?

Now, walruses up there are going to be looked on as chiefly dog food by the natives. Am I right?

Now, if we say okay, you natives, you get a management program and we will let trophy hunters go up there and take the walruses for you, maybe one of those walruses will mean \$8,000, \$10,000 to the economy up there.

The trophy hunter says it has not just dog food value but has value to us as a trophy.

Which approach is more valid over the long pull and really considering the walrus?

Mr. FRANK. Are you asking, Mr. Congressman, whether we should give you an opinion now?

Mr. DINGELL. I am asking which is the better approach in terms of providing protection of the walrus, the protection of the walrus habitat, crop approach, and conservation of the walrus by the native, the idea of shooting them for dog food or the idea of converting them into valuable trophies down here?

Mr. FRANK. It is obvious to me that neither is good if it is going to result in over-kill of endangered species.

Mr. DINGELL. Let us take the tiger.

You have tigers in a few areas, and you have within those limited areas a harvestable population of tigers that can be taken without hurting the tiger, okay?

On the one hand, you say we are not going to let American hunters go over there and get the tigers. So the American hunters do not go and get the tigers, and people in the area tend to regard them as something to be poached or killed off, and something that is going to be killing their cattle, or just a natural enemy that has been used to scare Hindu children back into the darkness of time.

On the other hand, you say, okay, you folks over there set up a management program which preserves and protects the habitat, preserves the tiger, and allows the taking of a shootable surplus.

Now, which of those two approaches is better for the long-term protection of the tiger, if you happen to have a shootable surplus in a harvest of tigers?

Mr. FRANK. If there is a surplus, we would have no objection, and it might be preferable to have the hunter doing it rather than a commercial industry.

Mr. DINGELL. I am not laying any traps for you. I am just trying to get in the record the fact that this country does want to administer

its program to encourage management programs which are going to encourage the highest and most economically viable use.

In my view, that happens to be hunting as opposed to having some native poacher killing and filling up some hide merchant's storeroom with tiger skins.

Mr. FRANK. First, we agree with management in the foreign place and, second, I think you are quite correct, that a hunter going after a trophy is perhaps preferable to someone going after the hide for a coat. That would be unobjectionable from our point of view, if there was a surplus.

However, the Department of the Interior has not found there are surpluses.

Mr. DINGELL. The Department of the Interior has chosen to take the simpler way and say since the spotted cats are in danger in some places, or many places, or most places, we are not going to let any spotted cats get in, and converted the spotted cats essentially from a managed resource into essentially something that is still going to be shot at by the native poacher without the incentive that exists from encouragement toward the management program.

I guess the real thrust of this question is, would this committee not be well served now to come up with language that would insure to the maximum degree possible that we would encourage sound management of the species and population of animals not on list No. 1?

Is that not really what we should be trying to do?

Mr. HUGHES. Sound management for the benefit of the species, as you just said, is the key to the whole thing.

Last week I attended the North American Wildlife Conference where Dr. Durward L. Allen of Purdue University presented a new North American wildlife policy. In it, he emphasized one point which is excellent, and one which I am not so sure is so good. The weak point is that wildlife should be managed for the benefit of man, and I do not think this is quite what we had in mind.

Mr. DINGELL. Well, if you look at the legislation I sponsored, and look at the marine mammals legislation, you will recall, we said we manage for the benefit of these species.

Mr. HUGHES. And that is exactly what we are trying to get written into a new Sierra Club policy, and we listed it right out of your marine mammal bill.

Dr. Allen also said that it has been the opinion of professionals for so many years that the highest use of wildlife is the nonconsumptive, esthetic use.

Mr. DINGELL. I have to be truthful with you. I agree with you. I have to be equally practical with you and say you are not going to save the habitat if you say OK fellows, if you just go out and look.

There are a lot of hunters who will pay to shoot the animal, but I do not know how many hunters will pay to go out and just look at them.

Mr. HUGHES. The photo safari business in Africa economically is growing, and perhaps will pass the shooting safari business.

Mr. DINGELL. Let me ask you a question.

How many nonduck hunters are going out to buy the duck stamps?

Mr. HUGHES. A few.

Mr. DINGELL. This is coming about, but the point I am making to you is you have to live with the real world here, you know. You just do not save the species with good wishes, because I can slug somebody with the cost of buying habitat or paying for protection.

That is the way the subcommittee has functioned over the years, and the one fool we have been able to stick with the cost of this program over the years is the hunter. The nonhunter will scream about the hunter, and he does that regularly. You have all kinds of them sitting about and screaming about how the hunters are wiping out the herds, and how we ought to hunt the hunter instead.

What I am saying to you is we have this problem of these folks who do not happen to like the idea of there being hunters around, but they do not pay the freight. The freight is paid by the hunter. He pays the tax on his gun, and shells, the fishing man pays tax on his rod, and reel, and line, and lures.

As you know, the hunter buys the duck stamps, the fisherman buys a fishing license, but the dickybird watcher raises Cain about the hunters slaughtering the beast. But they have not put a nickel into the pot, and this is a source of constant irritation to me, and the game management people, who have been paying the freight for these many years, while these other people have been out fussing.

Mr. HUGHES. Well, I heard this argument every time.

Mr. DINGELL. How much do the nonhunters put into the pot?

Mr. HUGHES. It is a perfectly true argument. I cannot fault it at all, but I do not think the fault is so much with the dickybird watchers.

Mr. DINGELL. I happen to like them. I happen to be one myself.

Mr. HUGHES. It is the fault of those who make the laws, who have not legislated payment.

Mr. DINGELL. When we are repealing the taxes on firearms and ammunition, the hunters are the only group in our society that said continue the excise taxes on any arms, any ammunition, and fishing tackle.

I have never heard a word from anybody else demanding that they be taxed. I have heard the dickybird watchers say we ought to have a tax on binoculars. I am going to tax binoculars in due course. These things are coming. I am going to do one step at a time. I think everybody ought to pitch in and help, and I must tell you I am getting a little worried.

Mr. HUGHES. I will support you on the binocular tax.

Mr. DINGELL. You just happen to be down there fussing about hunters, and I kind of like to get the record in a clearer perspective here.

Mr. FRANK. Mr. Congressman, so the record is perfectly clear, we are not against the trophy hunter in favor of the poacher.

Mr. DINGELL. All right, but you have to understand it is a sort of either/or thing.

Mr. FRANK. If there is a surplus, it seems to me reasonable to have the hunters paying their way.

Mr. DINGELL. It is, as a matter of fact, much more desirable to have the hunter over there harvesting the tiger, than to have some poacher getting it.

Mr. FRANK. I could agree with you entirely on that if, when the Department of the Interior sees that skin and lets it in, the Department of the Interior knows it is a surplus and not the skin of one of the last 10 remaining animals.

MR. DINGELL. You will never hear me advocate that, and the fact that I introduced H.R. 37 this year, and I was the drafter of the original endangered species legislation, and the fact that H.R. 37 antedates this, and this committee probably moved to get you an International Conference on Endangered Species, should speak clearly on my attitude on that.

MR. FRANK. We do applaud your attitude, and want to thank you for the Endangered Species Convention. Also, you gave us a great deal of help with the negotiations of the Antarctic Seal Convention, and it was through your efforts that the State Department was pushed into taking very favorable positions on both of those conventions.

MR. DINGELL. We have been leaning on it for some time. That was a little slow coming.

The point I want you to come around to is to understand that this country wants a management program that is going to maintain these populations around the world.

We put in there language getting counterpart funds into this program abroad. We have literally piles of rupees over there, \$4 billion worth of rupees sitting in North India.

But you have got to understand the Americans have been putting money in to preserve every tiger sanctuary in North India and Bengal, and some of the malcontents that appear before this committee, they have been the hunters who say we have to save them.

One of the reasons is they love the tiger, but another reason is they have to be keenly aware of the hard fact that the tiger is probably going to be going out. It has probably now gone as a shootable population, at least for the time being, and yet, I can tell you of cases of my own knowledge, where rooms are just full of tiger skins over there, in places in India.

If you do not take your tiger in India, you can go to a poacher and he can get you one.

I guess maybe I have been preaching, but these are some hard facts you folks have to live with, and you understand the reasons why this particular committee happens to think that we want to have legislation that is going to encourage management in other countries to keep these population levels up.

You are not going to sell esthetics to a starving Hindu.

MR. HUGHES. What you are preaching is very good, but unfortunately, you are preaching it to the converted, and you will have to find a way to reach the heathen.

MR. DINGELL. Mr. Potter?

MR. POTTER. Perhaps we might proceed to a somewhat less explosive subject.

Discussing this question of a review of the hardship exemptions, you indicate that the application must be available for public inspection. Are you suggesting this ought to involve some type of adjudicatory type of hearing, or simply that all of the material should be exposed to public view?

MR. FRANK. They should be exposed to public view so that we know what the Department of Interior is doing. They have not permitted us to do so. First, we want the information available to us, and secondly, we want notice in the Federal Register of what they propose to do, and the reason for it.

We may not need to go through a hearing, but at least we ought to have the opportunity to present our comments.

Mr. HUGHES. I would like to add that under the marine mammal bill, there have been several hearings now held under the hardship provisions, and we have been monitoring those, and have been getting fairly good cooperation, I understand, from the hearing people and the people in Commerce.

The hardship is questionable, because they want to take and stock against future sales, but at least we are finding out about these things.

We are reading about them in the Federal Register, and if we find that some one is getting out of line from our point of view, we will know enough to take action.

Mr. DINGELL. Now, this committee so drafted that bill that the whole business is done in the broad light of day.

Mr. HUGHES. I hope it happens in this bill.

Mr. POTTER. If you have suggestions to implement this, they would be of interest and use to us.

On page 12 you refer to the problem of the exemption to the port of entry for commercial fish and shellfish. I understand the thrust of your remark saying that fish and shellfish which are endangered should come through the regular ports of entry.

I suspect there are horrendous problems of enforcement involved: That someone bringing in tropical fish might very well find it consistent with their program to bring in the fish through regular ports of entry, but as a practical matter, some commercial fisherman is out there fishing for what he is trying to catch in the ocean, and if he catches a fish or two that happened to belong to an endangered species, he is not going to significantly alter his behavior pattern and change course to bring them into New York City.

Mr. FRANK. I understand the problem. I am not sure we know how to resolve it other than the suggestion we made.

Most commercial fishermen will not be catching endangered species. In cases where they might catch the endangered species, if we impose this burden on them, it will be another incentive not to go after endangered species, or if they see them, try not to catch them.

This is not an unreasonable burden to place on someone.

Mr. POTTER. Under what circumstances do you think it is likely someone is going to bring in a fish or shellfish that belongs to an endangered species?

Mr. FRANK. I do not think it is likely. I am not sure.

Mr. POTTER. So really your proposed amendment is more form than substance.

Mr. FRANK. I do not see where you need the exception if it is not likely it will occur. There appears to be an exception in here now to allow someone to bring endangered species of shellfish into an unregulated port. If that is something that will probably not happen, why make an exception in the law for it?

Mr. POTTER. The other point I would make, I would say it is not often that the Congress is ahead of the conservation and environmental community, but I think you will find (referring to your exhortation on page 13 that the Secretary of State convene an international conference to promote the conservation of marine mammals) there are a clear number of sections in the marine mammal bill already requiring that.

Mr. FRANK. When do you think that is going to be taken care of?

One of the problems in the Endangered Species Act of 1969 was that you asked the Secretary of State to convene a conference on endangered species, I think a year and a half or 2 years ago, and they finally got around to it almost 2 years later.

What we are asking you is to continue pressure on them for the purpose of a timely conference on marine mammals.

Mr. POTTER. That has already been done, the most recent leaning occurred a week and a half ago.

No further questions.

Mr. DINGELL. Mr. de la Garza?

Mr. DE LA GARZA. No questions.

Mr. DINGELL. Mr. Rountree?

Mr. ROUNTREE. No questions.

Mr. DINGELL. Gentlemen, we thank you for your testimony. We certainly appreciate your interest in this, and look forward to your suggestions in terms of further amendments that you might deem necessary, and we will consider these very carefully.

Mr. FRANK. Thank you, Mr. Chairman.

Mr. DINGELL. Our last witness is Mr. James Corcoran, assistant attorney general, State of New York.

Mr. Corcoran, you are here to give evidence on behalf of the attorney general of the State.

Identify yourself fully for the purposes of the record, and we will receive your testimony.

STATEMENT OF JAMES P. CORCORAN, ESQ., ASSISTANT ATTORNEY GENERAL, STATE OF NEW YORK

Mr. CORCORAN. My name is James Corcoran, assistant attorney general of New York, here on behalf of the New York State Attorney General.

I am with the Bureau of Environmental Protection.

Mr. Chairman, our office which has responsibility for enforcing New York's endangered species legislation, strongly opposes the present language of section 4(e) of H.R. 4758, the Endangered Species Conservation Bill of 1973, which as now worded, would jeopardize State statutes protecting a greater number of endangered species than are covered by Federal law.

Section 4(e) of the bill states that any State law is void which prohibits transactions in interstate and foreign commerce inconsistent with section 4(a) and 4(b). Since section 4(a) and (b) prohibits the sale or offer for sale of only those animals which the Secretary of the Interior concludes are endangered or likely to become endangered, any State law which is more restrictive than the Federal law would automatically be voided by section 4(e) as it is presently worded.

New York State's Mason law (section 358-a of the Agriculture and Markets Law), a copy of which is annexed hereto, prohibits the sale or offer for sale in New York State of the hides, or any article made from the skins or hides, of any species of alligator, crocodile, leopard, tiger, ocelot, and certain other species of animals which the State legislature has determined are in imminent danger of extinction or are victims of indiscriminate exploitation.

Some of these animals are not presently on the Secretary's list, nor is there any certainty that they will be included in the near future. For example, the Mason law, which has been upheld as constitutional by both State and Federal courts,¹ protects all species of alligator, caiman, and crocodile, and the attorney general, working in cooperation with Federal authorities, has been able to prohibit in New York the commercial exploitation of these species, not all of which appear on the Federal list.

Our experience has shown that when only a few species of a certain genus or order of animal are protected, the exploiters simply turn to the unprotected species and begin slaughtering them in rotation until the entire species or genus is in imminent danger of extinction.

Since all endangered species under the Mason law travel in interstate or foreign commerce to New York, this law would presumably be void except insofar as it precisely followed the Federal law, in which case the State law would be meaningless. The States would be preempted from the field entirely, and past experience and future contributions by the States to this important area would be negated.

We believe the language in section 4(e) of the proposed act should be amended thusly:

(e) Nothing in this act, or any amendment made by this act, shall be construed as superseding or limiting the power of any State to enact legislation more restrictive than the provisions of this act for the protection and conservation of fish and wildlife, including, but not limited to, the regulation or prohibition of the possession, sale, or offer for sale of specimens or of products processed or manufactured from the specimens of fish and wildlife, whether such specimens are alive or dead.

This language, which closely follows the wording of another endangered special bill now being considered, H.R. 37, affords the States the opportunity to continue to be forums for progressive legislation in this important field.

This office fully supports strong Federal action to curb the increasing destruction of so many endangered species of wildlife throughout the world. But we see no reason why strong Federal action should prevent strong State action aimed at achieving a common goal—the protection of the Earth's wildlife.

We strongly recommend the substitution for section 4(e) of H.R. 4738 the wording of section 6(e) of H.R. 37, which preserves State laws which protect a number of endangered species which are not on the Secretary's list.

Mr. Chairman, I might note that the section which I quoted, which we would like to see substituted for section 4(e) in H.R. 4758, is slightly different from the language in H.R. 37.

Section 6(e) of H.R. 37 we feel is much preferable to the language in section 4(e) of H.R. 4758, but we would recommend some changes in section 6(e) of H.R. 37, as well.

On line 12, page 11, of H.R. 37, instead of including, "including the regulation, prohibition of the retail sale of specimens," would it not be better to say "prohibition of the possession, sale, or offer for sale of specimens or products," et cetera.

In this way I think that the subsection covers more completely the proper scope of State endangered species laws.

¹ A. E. Nettleton Co. v. Diamond, 27 N.Y. 2d 182 (1970), app. dsmd. sub nom. Reptile Products Assn. v. Diamond, 401 U.S. 969, Palladio, Inc. v. Diamond, 321 F. Supp. 830 (S.D.N.Y. 1970), aff'd. 440 F. 2d 1319 (2d Cir.), Cert. den. 404 U.S. 983 (1971).

I see no point to limit it simply to retail sales.

I think also H.R. 37 is preferable to H.R. 4758 in a number of other ways. For example, section 11 of H.R. 37 regarding the endangered flora we think is an important step forward in the protection of endangered flora, and we fully support this particular section, which is not included in H.R. 4758.

In addition, we fully support in H.R. 37, section 7(c), which recognizes the problem of identifying many endangered species whose skins or hides so closely resemble other species that are not endangered; and section 7(c) giving the Secretary of the Interior authority to regulate the importation of species that closely resemble endangered species, we think is very important and necessary for the protection of the endangered species.

Thank you, Mr. Chairman and members of the committee.

[The annex to Mr. Corcoran's statement follows:]

MASON LAW

§ 358-a. Sale of certain wild animals or wild animal products prohibited.

1. No part of the skin or body, whether raw or manufactured, of the following species of wild animals or the animal itself may be sold or offered for sale by any individual, firm, corporation, association or partnership within the state of New York after the effective date of this section:—Leopard (*Panthera pardus*), Snow Leopard (*Uncia uncia*), Clouded Leopard, (*Neofelis nebuloso*), Tiger (*Panthera tigris*), Cheetah (*Acinoyx jubatus*), Alligators Caiman or Crocodile of the Order Crocodylia, Vicuna (*Vicugna Vicugna*), Red Wolf (*Canis niger*), or Polar Bear (*Thalarectos maritimus*), or after a period of twelve months from the effective date of this section, of the following:—Mountain Lion, sometimes called Cougar (*Felis Concolar*), Jaguar (*Panthera onca*), Ocelot (*Felis pardalis*), or Margay (*Felis wiedii*).

2. Any officer or agent authorized by the commissioner of the New York state conservation department, or any police officer of the state of New York, or any police officer of any municipality within the state of New York, shall have authority to execute any warrant to search for and seize any goods, merchandise or wildlife sold or offered for sale in violation of this section, or any property or item used in connection with a violation of this section; such goods, merchandise, wildlife property shall be held pending proceedings in any court of proper jurisdiction. Upon conviction, such seized goods, merchandise or wildlife shall be forfeited and, upon forfeiture, either offered to a recognized institution for scientific or educational purposes, or destroyed.

3. The Commissioner of conservation may permit, under such terms and conditions as he may prescribe, the importation of any species or subspecies of fish or wildlife listed in this section for zoological, educational, and scientific purposes, and for the propagation of such fish or wildlife in captivity for preservation purposes, unless such importation is prohibited by any federal law or regulation.

MR. DINGELL. Thank you very much for your very helpful statement.

MR. DE LA GARZA?

MR. DE LA GARZA. No questions.

MR. DINGELL. Mr. Eckhardt?

MR. ECKHARDT. I agree with you that the language that you suggest is far better than H.R. 4758 with respect to the effect on State laws, and that the language of H.R. 37 is better.

It is substantially the same, I think, as what you state.

I do not agree with you that section (e) in H.R. 4758 really has the effect that you state.

I would read it as stating that any State or regulation is voided to the extent that it would effectively prohibit import/export or transactions in interstate foreign commerce, et cetera. And then, in its

reference to regulations issued under authority of subsection (b) hereof, the only word that you can apply to that section is the term "prohibit," because it certainly would be impossible for State law to permit regulations issued under authority of subsection (b) hereof.

I read it as intending to mean the same thing as contained in H.R. 37, except insofar as it specifically provides the State shall not interfere with importand export regulations by the Federal Government, and I suppose your language would be just as good there because I do not believe, as a matter of constitutional authority, a State could supersede Federal regulations with respect to exports and imports.

Mr. CORCORAN. I think you are right, Mr. Eckhardt, about that.

I think the troublesome language in section 4(e) is not with regard to imports or exports, but that it would void any State law which prohibits transactions in interstate or foreign commerce inconsistent with section 4(a) and 4(b).

Now crocodile skins or caiman skins imported from South America travel in interstate and foreign commerce. Under the Mason Law, we are able to prohibit the sale of these items in the State of New York, but it seems to me this subsection could be construed to prevent New York from enforcing its law if these items are traveling in interstate commerce.

Mr. ECKHARDT. Only if it is inconsistent with subsection (a) hereof which would be true, it seems to me, whether or not you made this provision. Because Federal law purports to regulate imports, exports or transactions, it would seem to me, as a matter of well-established Federal authority, to preempt and control that, and it would further seem to me unfortunate if we attempted to permit a State to interfere in the area of interstate and foreign commerce, which is sought to be occupied by the Federal Act.

Mr. CORCORAN. Well, the Mason Law was challenged in both State and Federal Courts on the grounds inter alia that it was an undue burden on interstate commerce because it would interfere with the free flow of skins and articles made from the skins of endangered animals into and out of the State of New York.

The courts rejected those arguments and said that under the police power, New York could regulate the sale of endangered species, skins and articles within its border.

That is all New York State wants to do.

Mr. ECKHARDT. Do you think you could or should regulate such interstate matters in the event the Federal Government purports to enact something like section (a) of this same section?

Mr. CORCORAN. Section 4(a)?

Mr. ECKHARDT. Yes.

Now, all this seems to me to say is if the State law in any way permits or prohibits acts which are otherwise dealt with, with respect to permission or prohibition in section (a), section (a) prevails. And it would seem to me—and I am not arguing whether the Federal law should have gone into the areas that section (a) goes into—but if the Federal law does go into the area of regulating imports, exports and matters affecting commerce between the States, it would seem to me that it ought to preempt the field, because, in the case you are giving, you are citing a case in which the Federal law has not attempted to enter the field but said that that field was excluded to the State because it was in interstate commerce and was reachable by Federal

law, no Federal law has been enacted in an attempt to reach it, is that not true?

Mr. CORCORAN. Mr. Chairman, I think this language, it is ambiguous.

I could be interpreted in such a way that it would not void the Mason Law, but I think it could also be interpreted by a court to void the Mason Law and remove from that laws prohibitions any animals that are not on the Secretary's list.

That is what disturbs us, Mr. Eckhardt. It is not that we want to regulate importation, exportation, or interstate or foreign commerce. It is that we want to be able to regulate, prohibit the sale in New York of certain endangered species' skins and articles made from those skins.

And it seems to me the language here is so loosely worded as to jeopardize the Mason law.

I think the language in H.R. 37 is much better. That allows the States, you know, to go ahead and make their own contributions.

Mr. ECKHARDT. Well, it certainly raises an interesting question the committee ought to address itself to.

Mr. CORCORAN. You see, whatever we receive in New York, has traveled in interstate or foreign commerce—crocodiles, caiman, leopard, all the animals on the Mason law list, except alligator, are foreign species.

Mr. ECKHARDT. Well, the point I am making is that this says the State law or regulation is void only to the extent that it would be inconsistent with subsection (a) here in various areas in which transactions involve interstate and foreign commerce.

It does not say it is void if it affects interstate and foreign commerce.

Generally, it says only if in doing so, it becomes inconsistent with subsection (a), which addresses itself to imports, exports, and interstate and foreign commerce.

Mr. DINGELL. I think we have some language here that we have not discussed, and that is "*provided . . . (the) State law or regulations respecting the taking of endangered species . . . pursuant by this act*" shall be, et cetera, et cetera. That only prohibits effective State laws relating to prohibitions on taking of animals of this kind, but the part 3 is about the first or 10 or 12 lines, and I think the gentleman has a very good point here that that language is ambiguous and can be read two ways, depending on how you read (a) or (b).

Mr. ECKHARDT. It certainly can be improved.

Mr. DINGELL. Have you any court cases on the Mason law in New York whether or not it is a burden on interstate commerce?

Mr. CORCORAN. When the Mason law's constitutionality was challenged, both in State and Federal courts, this issue was raised. And the courts rejected the argument and said it was within the police power of the State to enact such a law prohibiting sales within its borders.

We have recently had some cases involving companies in New York which were importing from South America the skins of caiman and then reselling the items from their New York office to buyers in Europe and Asia.

Now, the Attorney General took the position that since they were doing business in New York, and this was their only office, this is

where they are transacting business, they were selling and offering for sale in New York, and these sales should be prohibited under the Mason law.

We brought suit, and we won in State court on the ground that it was a sale within the State of New York.

We had another case involving a large company which was selling crocodile watchbands, not to New York customers, but to customers in other States.

They would send their salesmen throughout the country to solicit orders. And we took the position there, also, that since their office was in New York, this was where the sales and offers for sale were actually taking place, where the sales were being consummated in effect, and such conduct was prohibited by the Mason law.

This case went all the way to the New York Court of Appeals, the State's highest court. And, by unanimous decision, they held that, yes, this conduct was in violation of the Mason law, that this company was doing business in New York, transacting sales in New York. And it was prohibited from continuing to do so, even though the company was doing business in interstate commerce and foreign commerce, in effect.

MR. ECKHARDT. Mr. Chairman, I really have no contest of the result of the New York case.

The only point that I am making is that in the New York case, New York only purported to have outlawed a certain manufacturer that ultimately went through interstate commerce.

There was no attempt on the part of the Federal Government to enter that field, either to wholly occupy it or even occupy it in part.

The question I have, though, is a question of policy.

When the Federal act does enter the field of regulating interstate commerce like, for instance, your alligator watchbands, it would seem to me much preferable for the Federal law to preempt that field because you have concerns with several States.

You have concerns with commerce.

I just do not find this language particularly harmful there as long as it says that where interstate and foreign commerce is purportedly regulated under section (a), the State law shall not either enlarge nor diminish that regulation.

MR. CORCORAN. Well, Mr. Eckhardt, I think the language is so ambiguous that it could be interpreted your way, or it could be interpreted in a way I think more harmful to the State endangered species laws, and I think the language of H.R. 37 is preferable. It is clear and unambiguous. It permits the States to be more progressive, more restrictive, if you will, in regulating the sale of endangered species within their borders.

I would say that in environmental legislation, for example, the Clean Air Act of 1970, the Federal Government permits the States to enact more restrictive standards as far as air pollution control goes.

MR. ECKHARDT. I think that is limited to the State of California, the Air Act, is it not?

MR. CORCORAN. The Clean Air Act? No, I think it permits any State to establish standards which are stricter than the Federal ambient air standards.

MR. DINGELL. I have had some sorry personal experiences with that particular section. There are three ways the Clean Air Act functions,

one with regard to the ambient air quality standards. There, the State may enact more stringent standards.

The State may also enact more stringent legislation with stationary sources, but only one State, and this is to my mind absolutely insane, may enact more stringent requirements with regard to moving sources, and that is the State of California.

Mr. ECKHARDT. The chairman reminds me of the correct interpretation of the Air Act.

Mr. DINGELL. I have suffered greatly over that.

Mr. CORCORAN. My point was simply that the Congress has recognized the right of the States to legislate in the environmental area, and has permitted them to so legislate, so long as they meet the minimum standard established by the Federal law, and I think this is a good policy.

I think States in this way can often serve as a catalyst to the Federal Government to perhaps in this case expand its endangered species list, or establish more stringent air quality standards, and I think this policy should come forth in the Endangered Species Act of 1973.

Mr. ECKHARDT. Thank you.

Mr. DINGELL. Mr. Potter?

Mr. POTTER. Let me employ a lawyer's device, and ask you a couple of hypothetical questions, just to clarify what is by now a very murky picture in my own mind.

Let us say that the Federal Government says animals of species "A" are endangered.

Let us say further that the State of New York concludes that animals of species "C" are in danger.

Would and should the Mason law, in your view, operate to restrict the activities of a dealer in products of animal C, if the products come from Massachusetts and stop in New York on the way to Virginia?

Mr. CORCORAN. In that case, no, I do not think New York law should be imposed.

In other words, the sale is taking place in Massachusetts, or Virginia, and the goods are simply passing through New York; is that the situation?

Mr. POTTER. Right.

Mr. CORCORAN. No, New York law would not prevail in that case. It would not be applicable, because it only prohibits sales or offers for sale within New York State.

If that dealer were in New York selling to some one in Virginia, then the Mason law might apply.

Mr. POTTER. That was my next hypothetical case.

Mr. CORCORAN. Those are the cases that I was talking about before, that the Mason law was held to apply to such situations.

Mr. POTTER. Would similar results obtain if the products came from abroad instead of the State of Massachusetts?

Mr. CORCORAN. If the sale takes place in New York; yes, sir.

Mr. POTTER. If, however, it took place someplace else than New York, however long they rested in New York, suppose they were broken out of their original cartons?

Mr. CORCORAN. I do not think that would matter, Mr. Potter, because the law prohibits only the sales or offers for sale.

Mr. POTTER. So the act of selling or the act of offering for sale triggers the guillotine?

Mr. CORCORAN. That is the key thing, where does the sale take place?

Mr. DINGELL. It does not deal with warehousing inside of New York as part of the transaction that would be, let us say, flowing into the United States by way of the port of entry, say the New York docks, or Kennedy Airport.

Mr. CORCORAN. No, it would not affect such transactions, unless again the sale were taking place in New York.

Mr. DINGELL. And would not impinge on, let us say, a shipment through New York, or a shipment coming in, the prohibition is against the sale, is what you are saying.

Mr. CORCORAN. I do not think the States have the right to prohibit imports or exports of goods that are otherwise being sold legally.

Mr. ECKHARDT. Will the gentleman yield?

Mr. DINGELL. Mr. Potter has the floor.

Mr. POTTER. Certainly—I yield.

Mr. ECKHARDT. In Mr. Potter's hypothetical question, and I think this is perhaps the matter that you would like to see changed, under section 4(a) it becomes illegal under Federal law to sell or offer for sale in interstate or foreign commerce any species of animal, et cetera.

Mr. CORCORAN. Yes.

Mr. ECKHARDT. If that animal "c" is controlled only by New York's law, and not by Federal law, and your New York act purports to make it illegal to sell that species in a contract in New York to another State, I would think that this section would invalidate the New York law to that extent.

Mr. CORCORAN. I am afraid that that is the case, and that is one reason why we are opposing this section.

Mr. ECKHARDT. And, of course, it would be this question that would be ambiguous. It would be more deeply entrenched on your New York law, and I do not know the answer.

If the product were sold in the State of New York in violation of the New York law, is that in interstate or foreign commerce if, for instance, it moves by rail, or mail, et cetera?

Mr. CORCORAN. That is another problem with this language.

Mr. ECKHARDT. I think the gentleman raises a very interesting point. It certainly ought to be clarified.

Mr. CORCORAN. The only thing is if we did follow this kind of language, I would think that the Federal act would preempt in certain areas.

Mr. POTTER. I would be interested to know what your thinking is, what kind of areas would it be appropriate to have Federal exemption.

Mr. ECKHARDT. In areas that would affect two States. For instance, in the first hypothetical that I mentioned, it seems to me that where New York prohibits the manufacture of, say, an object from the skin of an endangered species under the New York law, and purports to enforce that law in some way, that would affect Massachusetts by sale across the State lines, and it would seem to me desirable that the Federal law control that area, but that the Federal law not preempt New York from making any law it wants to with respect to intrastate sales, even though it may be to a business affecting commerce.

The real question comes as to whether or not interstate commerce is considered in its restrictive sense, or whether it is wide enough to affect interstate commerce it would seem to me.

Mr. DINGELL. Will you yield?

Mr. ECKHARDT. Yes.

Mr. DINGELL. We have several situations here. One is where the goods come in from abroad, and come to rest, and are open to go elsewhere.

Depending on whether they go inside the State of New York or not, it may or may not apply. It might apply depending on whether the goods came to rest in the hands of a New York resident or a person doing business in New York for sale then abroad outside the State of New York, or outside the United States, then the Mason Act would apply, as I understand your testimony.

Mr. CORCORAN. Yes.

Mr. DINGELL. But if it were just to come to rest very briefly in the hands of, say, an express company or an importer of some kind for ultimate delivery to the real purchaser who was elsewhere, the Mason Act would not apply.

Now, as I read your comments, Mr. Eckhardt, you are going to the question of goods coming in for later sale in another State, and I believe as I interpret your comments, you are indicating that there the Mason Act should be preempted as it would appear to be done under the bill.

Mr. ECKHARDT. Yes.

Mr. DINGELL. Would this include manufacture or simply transportation of the raw article or the product or the animal or the part without introduction of some kind of manufacturing process?

Mr. ECKHARDT. Well, I would assume, under the language of the Federal act, only the sale or offer for sale in interstate commerce would be controlled by the Federal act, if the manufacture or prohibition of the manufacture could be controlled by the State of New York.

Mr. DINGELL. Does the Mason law apply to manufacture or processing of these endangered species' parts or hides inside New York?

Mr. CORCORAN. No, it does not, Mr. Chairman.

Mr. DINGELL. Just the sale?

Mr. CORCORAN. Just the sale or offer for sale.

Mr. DINGELL. So, if I were a furrier and I were to get a shipment of hides of some kind in from abroad, and I could receive them and process them, and then move them out myself for sale, let us say, from a store in Rhode Island or Connecticut, could I do that under the Mason Act?

Now, be sure of your answer, because we are trying to decide what we are going to do with this particular section, and I want you to help us. Do you want to think about it?

Mr. CORCORAN. I think it depends on where the sale is consummated.

Mr. DINGELL. Received it, processed it, and then move it out of New York to Connecticut for sale in my branch in Connecticut.

Mr. CORCORAN. In other words, the sales and offers for sale are made from Connecticut?

Mr. DINGELL. Yes. The goods come to rest in New York obviously because I processed them there into a fur coat. Does the Mason Act apply in that situation?

Mr. CORCORAN. No, it would not apply if the sales or offers for sales are being made in Connecticut.

Mr. POTTER. I can see how you can get into some unbelievable complications in finding out where the offer for sale really took place.

Mr. CORCORAN. That is right.

Mr. POTTER. I do not know how much of a burden on interstate commerce that would be, but the implications are interesting.

Mr. ROUNTREE. Mr. Chairman, may I interrupt for a second?

Mr. DINGELL. Surely.

Mr. ROUNTREE. Has the Department of Interior, in drafting the administration's bill, been in contact with the attorney general's office of the State of New York in relation to this particular problem?

Mr. CORCORAN. No, it has not been.

Mr. ROUNTREE. Have you initiated any type of contact with the Department of Interior?

Mr. CORCORAN. I was in contact with them last year about a bill that was submitted at that time, which also had objectionable language similar to this.

But no one has been in touch with our office in regard to the 1973 bills.

Mr. ROUNTREE. I find that somewhat hard to believe. Perhaps the committee can ask both respective agencies to provide us a legal opinion as to the impact of the suggested language in all three instances, so that we can, when we get to executive session, make an appropriate policy decision on this point.

Mr. DINGELL. I think your suggestions and comments are very good.

Mr. POTTER. I do think the record might show my impression is that the language in the administration's bill was drafted to reach the problem of New York's Mason Act. It has been a thorn in their side for some time.

Mr. DINGELL. On its face, it would appear to be directed at the Mason Act.

Let me ask you a question about the Mason Act. I was aware of some controversy in New York regarding the drafting of it, but I was never fully aware of what went on.

Did the legislature afford some State officials the authority to make findings of fact as to whether particular species were endangered or subject to endangerment, or did the legislature make the finding itself?

Mr. CORCORAN. With regard to the Mason law, the legislature made the finding itself.

Mr. DINGELL. Did it hold hearings and take testimony to find out if some of these species were endangered?

Mr. CORCORAN. It held hearings on endangered species bills that were considered. I am not sure if the Mason law was one of the bills that was considered at those particular hearings.

There is also in New York a section of the environmental conservation law that is known as the Harris Act, which gives the State Department of Environmental Conservation—I should say the Commission of Environmental Conservation—the right to adopt the Secretary of the Interior's Federal endangered species list, so that in New York, in effect, we have two lists.

We have the animals on the Secretary of the Interior's list and we have the Mason law.

Mr. ECKHARDT. Will the gentleman yield?

Mr. DINGELL. Yes.

Mr. ECKHARDT. I cannot see any reason why New York, if it wants prevent the encouragement of taking of endangered species, does not make it illegal to process the furs of endangered species.

That is the way it could really exercise an impact against this procedure.

It seems to me it is evading the question to say you can manufacture leopard skins and sell them through the Neiman-Marcus department store in Dallas, but you cannot sell leopard skins in New York to people in Texas.

It seems to me that is a rather awkward way to get to the question.

Mr. CORCORAN. I think the point is well taken about prohibition of manufacturing or processing.

I do not believe that there is such an industry operating in New York now. I am not aware of any. But if they were operating, they would not be prohibited from operating.

It is a point well taken, Mr. Eckhardt.

Mr. ECKHARDT. Thank you.

Mr. DINGELL. As I read it here, the Mason Act deals with alligators and crocodiles, right?

Mr. CORCORAN. Right.

Mr. DINGELL. I am kind of sorry Mr. Breaux is not here. He is rather concerned about this.

Supposing that Louisiana is up to its ears in alligators and they have a management program to take care of their alligators and provide some incentive to the taking of the alligator, and regardless of whether or not alligators can be safely harvested and they have a marketable surplus of alligators, as a matter of fact, alligators are getting to be a nuisance, walking all over the golf course.

They still cannot be harvested for sale in New York, is that correct?

Mr. CORCORAN. That is right, unless the legislature amends the statute on this point.

Mr. DINGELL. Under the Mason Act?

Mr. CORCORAN. That is right.

Mr. ECKHARDT. They could still be purchased from Louisiana and not sold in New York?

Mr. CORCORAN. But the Mason law, like other laws, is flexible enough to add or delete animals, those that become endangered, and those that, through management practices, are no longer endangered.

I think the law is flexible enough to deal with that problem.

Mr. DINGELL. Without amendment by the legislature?

Mr. CORCORAN. Not without amendment.

Mr. POTTER. I take it that even the administration's bill is not so sweeping as to bar the operation of the Mason Act to prohibit your regulation of intrastate sale on alligators, even though Louisiana may be up to their eyeballs in alligators.

Mr. CORCORAN. Well, I am not so sure about that, Mr. Potter, because when you speak of prohibiting transactions in interstate commerce of goods that travel from Louisiana to New York, even if the sale is made from one person in New York to another person in New York, it still could be construed as an interstate commerce transaction, could it not?

Mr. DINGELL. These hearings were going along very nicely until you came in.

Mr. CORCORAN. I urge you to adopt H.R. 37.

Mr. DINGELL. Well, I have debated with you long enough, Mr. Corcoran. You have given the committee not only very helpful testimony, for which we thank you, but you have also given us an interesting matter to chew on for which we also thank you.

Mr. CORCORAN. Thank you, Mr. Chairman and gentlemen.

Mr. DINGELL. If there is no further business, the committee will stand adjourned until the call of the Chair.

[The following material was supplied for inclusion in the printed record:]

STATEMENT OF NEW YORK STATE ATTORNEY GENERAL LOUIS J. LEFKOWITZ

This office, which has responsibility for enforcing New York's endangered species legislation, strongly opposes the present language of § 4(e) of the Endangered Species Conservation Bill of 1973, which as now worded would jeopardize State statutes protecting a greater number of endangered species than are covered by Federal law.

Section 4(e) of the bill states that any State law is void which prohibits transactions in interstate and foreign commerce inconsistent with § 4(a) and 4(b). Since § 4 (a) and (b) prohibits the sale or offer for sale of only those animals which the Secretary of the Interior concludes are endangered or likely to become endangered, any State law which is more restrictive than the Federal law would automatically be voided by § 4(e) as it is presently worded.

New York State's Mason Law (§ 353-a of the Agriculture and Markets Law), a copy of which is annexed hereto, prohibits the sale or offer for sale in New York State of the hides, or any article made from the hides, of any species of alligator, crocodile, leopard, tiger, ocelot, and certain other species of animals which the State Legislature has determined are in imminent danger of extinction or are victims of indiscriminate exploitation. Some of these animals are not presently on the Secretary's list nor is there any certainty that they will be included in the near future. For example, the Mason Law, which has been upheld as constitutional by both State and Federal courts,¹ protects all species of alligator and crocodile, and the Attorney General, working in cooperation with Federal authorities, has been able to prohibit in New York the commercial exploitation of those species not all of which appear on the Federal list. Our experience has shown that when only a few species of a certain genus or order of animal are protected, the exploiters simply turn to the unprotected species and begin slaughtering them in rotation until the entire species or genus is in imminent danger of extinction.

Since all endangered species under the Mason Law travel in interstate or foreign commerce to New York, this law would presumably be void except insofar as it precisely followed the Federal law, in which case the State law would be meaningless. The States would be preempted from the field entirely, and past and future contributions by the States to this important area would be negated.

We believe the language in Section 4(e) of the proposed Act should be amended thusly:

"(e) Nothing in this Act, or any amendment made by this Act, shall be construed as superseding or limiting the power of any State to enact legislation more restrictive than the provisions of this Act for the protection and conservation of fish and wildlife, including, but not limited to, the regulation or prohibition of the possession, sale, or offer for sale of specimens or of products processed or manufactured from the specimens of fish and wildlife, whether such specimens are alive or dead."

This language, which closely follows the wording of another endangered special bill now being considered, H.R. 37, affords the States the opportunity to continue to be forums for progressive legislation in this important field.

This office fully supports strong Federal action to curb the increasing destruction of so many endangered species of wildlife throughout the world. But we see

¹ *A. E. Nettleton Co. v. Diamond*, 27 N Y 2d 182 (1970), app. dsmd. sub nom. *Reptile Products Assn. v. Diamond*, 401 U.S. 969; *Palladio, Inc. v. Diamond*, 321 F. Supp. 880 (S.D.N.Y. 1970, aff'd 440 F. 2d 1319 (2nd Cir.), cert. den. 404 U.S. 983 (1971)).

no reason why strong Federal action should prevent strong State action aimed at achieving a common goal—the protection of the earth's wildlife.

We strongly recommend the substitution for § 4(e) of H.R. 4738 the wording of § 6(e) of H.R. 37, which preserves State laws which protect a number of endangered species which are not on the Secretary's list.

§ 358-a. Sale of certain wild animals or wild animal products prohibited.

1. No part of the skin or body, whether raw or manufactured, of the following species of wild animals or the animal itself may be sold or offered for sale by any individual, firm, corporation, association or partnership within the state of New York after the effective date of this section:—Leopard (*Panthera pardus*), Snow Leopard (*Uncia uncia*), Clouded Leopard, (*Neofelis nebulosa*), Tiger (*Panthera tigris*), Cheetah (*Acinonyx jubatus*), Alligators Caiman or Crocodile of the Order Crocodylia, Vicuna (*Vicugna vicugna*), Red Wolf (*Canis niger*), or Polar Bear (*Thalarctos maritimus*), nor after a period of twelve months from the effective date of this section, of the following:—Mountain Lion, sometimes called Cougar (*Felis concolor*), Jaguar (*Panthera onca*), Ocelot (*Felis pardalis*), or Margay (*Felis wiedii*).

2. Any officer or agent authorized by the commissioner of the New York state conservation department, or any police officer of the state of New York, or any police officer of any municipality within the state of New York, shall have authority to execute any warrant to search for and seize any goods, merchandise or wildlife sold or offered for sale in violation of this section, or any property or item used in connection with a violation of this section; such goods, merchandise, wildlife or property shall be held pending proceedings in any court of proper jurisdiction. Upon conviction, such seized goods, merchandise or wildlife shall be forfeited and, upon forfeiture, either offered to a recognized institution for scientific or educational purposes, or destroyed.

3. The commissioner of conservation may permit, under such terms and conditions as he may prescribe, the importation of any species or subspecies of fish or wildlife listed in this section for zoological, educational, and scientific purposes, and for the propagation of such fish or wildlife in captivity for preservation purposes, unless such importation is prohibited by any federal law or regulation.

STATEMENT OF DANIEL A. POOLE, PRESIDENT OF WILDLIFE MANAGEMENT INSTITUTE

Mr. Chairman, I am Daniel A. Poole, president of the Wildlife Management Institute with headquarters in Washington, D.C. The Institute's program has been devoted to the restoration and improved management of renewable natural resources in the public interest for more than sixty years.

The Institute endorses the basic objective of the bills under consideration. We do not support any of them, however, because we believe they are inadequate and unresponsive. Strong and coordinated effort is needed at international, national and state levels to identify and aid threatened and endangered species of wildlife and plants. None of the bills under consideration would fill this basic need.

There are two main weaknesses present in these measures: (1) They are not predicated upon the principles of proven scientific wildlife management; and (2) They tend to disjoin rather than bring together federal and state cooperation in managing endangered species.

The only way to protect and enhance endangered species or any other wildlife, in our opinion, is with scientific approaches to problem solving. The great progress that has been made toward managing all wildlife over the last fifty years has come about through the deliberate application of proven scientific methods. Most management attempts evolving out of emotional reaction to problems have proven to be dismal failures. Examples of this include innumerable unsuccessful attempts to introduce exotic species into this country and widespread efforts to "stockpile" various species through artificial propagation and release.

Obvious omissions in all the measures before the Committee are the lack of a definition of conservation and a statement of the long-range goals which should be achieved relative to endangered species. We do not think that this legislation should limit its thrust merely to the protection of endangered species. It should make direct reference to restoring species to the highest practical level on all

remaining and future habitats. Thus, it should be pointed strongly toward preserving and creating critical habitat for endangered species. Consequently, we believe the term "conservation", which is used throughout the text, should be defined. As the committee knows, there has been confusion over the actual meaning. Congress last year wrote a sound definition of conservation and management into the Marine Mammals Protection Act. We believe the committee could strengthen the scientific thrust and the goals of the pending proposal by including that same definition, if only by reference.

The bills under consideration would not make the best use of all available resources in managing endangered species. They propose a direct and unnecessary extension of federal authority into an area of historic state responsibility. As such, their approval would create further dissension and confusion. The reasoning that endangered species will automatically be better off under federal control is ill-founded at this time. It is overly optimistic to expect good results from one poorly financed and undermanned federal agency, the Bureau of Sport Fisheries and Wildlife. Unfortunately, the bills ignore the good that can be accomplished by working with and through the fifty state conservation agencies that have legal responsibilities to care for resident fish and wildlife resources.

We question whether an all-federal program of the magnitude required to assist endangered wildlife, at home and around the world, can be assured of budgetary and appropriations support. Although the bills authorize no specific appropriations, this new federal authority, if it is to succeed, will require considerable expansion of the research, management, and enforcement staffs of the Bureau of Sport Fisheries and Wildlife.

The Bureau currently lacks adequate personnel and financing to enforce fully the laws and to implement programs for which it already is responsible. This is not said in criticism. We are vitally concerned about the Bureau and its programs. But we are not aware of any relaxation of budget or manpower ceilings that will permit expansion of the agency's law enforcement and scientific staff to anywhere near the capability required to respond to the authority that would be granted under H.R. 37 and H.R. 4758.

This is made evident by examination of the implications of these bills in terms of law enforcement, a most important activity in any successful fish and wildlife program, and of great importance with species sought for commercial purposes. Commercialization, of course, is one of the major threats to many of the world's wildlife. A second major threat is habitat contamination and destruction. Law enforcement can help control illegal commercialization of wildlife, it can do relatively little about habitat destruction.

The Bureau of Sport Fisheries and Wildlife has funding this fiscal year for 158 law enforcement agents. These men operate throughout the United States, including Hawaii and Alaska. To put this small number of federal wildlife enforcement officers into national perspective, I refer to an authoritative study of state wildlife law enforcement completed last year by William B. Morse, the Institute's western field representative. According to Morse's data, any one of ten states has more wildlife law enforcement officers than has the federal government for the whole country. In the fifty state wildlife agencies, there are more than 5800 full-time law enforcement agents. They comprise 32.3 percent of all employees in state fish and wildlife agencies. An average of slightly more than 27 percent of the state agencies' budget outlays is devoted to wildlife enforcement and more than \$72 million was invested in this work by the states during the most recent year of record. In contrast, the Federal Government, through the Bureau of Sport Fisheries and Wildlife invested less than \$5.5 million in enforcement in fiscal year 1972.

The Bureau is budgeted for approximately 3900 total employees—scientific, enforcement, clerical, etc.—during the current fiscal year. State wildlife agencies have more than 5400 biologists and managers in the field, more than 5800 law enforcement agents, and almost 18,000 employees overall. The total appropriated funds allotted the Bureau this year (FY 1973) amounted to \$75.6 million. An additional \$43.3 million will be collected from the manufacturers' excise taxes on items of hunting and fishing equipment. But most of this goes to the states under the long standing federal aid fish and wildlife restoration programs. For this year, the states have available \$214.3 million from license receipts alone, not including any moneys appropriated from general revenues or federal aid.

At least 31 states already are conducting programs to identify and collect information about threatened resident wildlife and to design programs for

their protection. Others are expanding their programs to include all species of wildlife. Through the International Association of Game, Fish and Conservation Commissioners, the states have developed a Model Law for enactment by state legislatures. We expect many states will adopt this Model Law at the earliest practicable time. The Model Law currently is under consideration by the Council of State governments for inclusion in its important report on suggested state legislation.

Section 7(a) of H.R. 37 and Section 4(a) of H.R. 4758 clearly provide for federal intervention into the management of resident endangered species. In Section 12(a) of H.R. 37 and Section 9(a) of H.R. 4758, the Secretary again would be given authority to manage resident fish and wildlife classified as endangered or likely to be endangered everywhere in a state, regardless of land ownership. The bills would do this by amending the second sentence of Subsection 4(c) of the Act of October 15, 1966 to read: "With the exception of endangered species listed by the Secretary pursuant to section 4 of the Endangered Species Conservation Act of 1973, nothing in this Act shall be construed to authorize the Secretary to control or regulate hunting or fishing of resident fish and wildlife on lands not within the system."

The sentence the proposed amendment would supplant, clearly upholds and sustains the authority of the states to manage resident fish and wildlife, including designating endangered species thereof, on all lands within the state other than those in federal refuges or similar areas. Should this amendment be adopted, and we hope that it will not be adopted, the Congress will have authorized an unwarranted federal intrusion into an area of historic state responsibility.

Those who favor a strong federal move into this area can argue that the states will be given an opportunity to cooperate. The bills contemplate this, of course. But the history of federal-state relation makes clear that states cooperate more readily and helpfully when they are given responsibility and a mission. As presently written, H.R. 37 and H.R. 4758 would divest the states of authority they now have and have had since the founding of this nation. In essence, these bills preempt state authority over resident endangered species and then request that the states do most of the work in administering endangered species programs, including those on many federal areas. That does not appear to be the best way to gain cooperation and to protect the wildlife resource. Further, we are not encouraged when we hear that a federal wildlife agency, with less than one-fourth the employees and about one-half the money of state agencies, is seeking primary responsibility in this area.

We urge that the committee view the opportunities inherent in this subject from the standpoint of creating a forcing action on the states, a procedure that has been followed many times on matters of national concern. It enables the Federal Government to alert the states and give them an opportunity to respond if they have not already done so. The forcing action procedure assures more efficient and effective use of federal and state funds and manpower, both of which are not unlimited at either level. We strongly believe that a sound and productive endangered species program, a program making the most efficient and effective use of available funds and manpower, should involve the Bureau of Sport Fisheries and Wildlife and the state conservation agencies in a cooperative effort.

Such a cooperative undertaking should :

- (1) Recognize the necessity for the scientific handling of the subject.
- (2) Recognize and build on the traditional responsibilities of both the federal and state governments for wildlife.
- (3) Set federal standards to be achieved by the states.
- (4) Provide federal financial assistance on a cost-sharing basis and link acceptance of the assistance with overall federal program coordination.
- (5) Provide for federal assumption of responsibility to protect designated endangered fish and wildlife in those states either a) refusing to participate in the program or b) failing to live up to the national standards set for the program.

This is the basic structure of the Federal Aid in Wildlife Restoration Act of 1937 and the Federal Aid in Sport Fish Restoration Act of 1950. We note also that this same plan is included in H.R. 38 and H.R. 4759, the animal damage control bills now under consideration by this committee. This same plan also was approved for animal damage control activities by the House during the 92nd Congress with the passage of H.R. 13152.

We believe the forcing-action procedure is the only sensible approach to follow with the endangered species proposal. In fact, we firmly believe that only

with strong action at the state level through state fish and wildlife agencies, with the Federal Government working in interstate and international areas, and with good communications and cooperative agreements between the two levels, can the American people be assured of a strong national attack on the problem of endangered and threatened wildlife.

A final point I wish to emphasize, Mr. Chairman, is that the history of American wildlife restoration has been one of rescuing many species of wildlife from extinction. There is nothing new or unique about the "likely to be threatened" concept of the pending bills. The state fish and wildlife agencies have been involved in such work since the very beginning. The problem is somewhat more urgent today, and it will be in the years ahead, because of man's increasing contamination and occupation of wildlife and fish habitat. Among the many rescued species are some that are regarded as common today—deer, elk, and pronghorns to name a few. Big horn sheep and mountain goats have been restored to many areas where they once were hunted ruthlessly by our pioneer forefathers. Sea otters have been reintroduced in areas of historic range, the fur seal is well out of danger, and wild turkeys now occupy more of North America than they did in colonial times.

Wildlife restoration in the United States has been a success story. The job is not finished, because expanding human populations and related development continues to destroy natural habitat. Wildlife restoration has succeeded because of the individual and cooperative programs of federal and state wildlife agencies. No other nation in the world possesses the depth of professional wildlife management talent and organizations as does the United States. The best way to guarantee success for the objective of the proposal before the committee, in our view, is to build upon this competence. We urge the committee to take advantage of existing federal-state capability to restore and protect wildlife. Full partnership between federal and state wildlife authorities will assure the success of this urgently needed program. This can be accomplished by amending the proposal in the way we suggest.

With regard to the recently completed international convention on endangered species, we recommend that further hearings be held before the committee acts on legislation to conform U.S. laws to the requirements of that document. Many people have not had ample opportunity to digest the proposed treaty and consequently cannot make meaningful input into any discussion at this time. Clearly, the Bureau of Sport Fisheries and Wildlife will require more law enforcement and scientific staff to fully discharge the duties that will be imposed on it under this convention. As noted in our statement, we believe the Bureau presently is poorly equipped, both by way of funds and manpower, to discharge the many responsibilities already vested in it.

THE NEW YORK BOTANICAL GARDEN,
Bronx, N.Y., April 11, 1973.

Representative JOHN D. DINGELL,
Rayburn House Office Building,
Washington, D.C.

DEAR MR. DINGELL: Further to my testimony on March 26, 1973, before the House Committee on Merchant Marine and Fisheries regarding inclusion of plants under HR 37 and HR 4758, I wish to submit the following points, which are arranged as answers to questions which were posed by committee members in response to the statement I read. The views expressed reflect the collective opinion of senior members of our botanical research staff as well as my own.

If there are further questions relating to the prospective legislation, I would be pleased to help in any reasonable way.

Sincerely yours,

HOWARD S. IRWIN, *President.*

Enclosure.

Questions raised during testimony given by Howard S. Irwin to Committee on Merchant Marine and Fisheries, considering legislation on endangered species.

1. Can we afford to merely study the endangered flora, as is provided for in HR 37?

Although continuing study is essential there is today sufficient expertise in this country among specialists on the spectrum of plant species found in the various

natural regions and also among those investigators studying natural plant groups to designate most endangered species. The cooperation of specialists is almost certain if an appropriate representative organization spearheads the drive for needed information; the machinery for remedial action exists.

2. Is the American Society of Plant Taxonomists the appropriate organization to prepare lists of endangered species?

Yes, at least to start the process of assessment. Most systematic botanists in the United States belong to this professional association. As its members are interested in maintaining botanical diversity on this continent, it is reasonable to expect that the majority would apply their special knowledge to cooperate in a meaningful project initiated by the Society and dedicated to preserving endangered species. It is to be hoped that this Society would enlist the participation of other more specialized or activist groups in working up lists of endangered species.

3. Should we stress preservation of environments or preservation of species?

Preservation of environments, by all means, is the most serious need. However, endangered species in environments which cannot be preserved should be salvaged by collection of seeds, seedlings, or other propagules by authorized persons and the attempt to cultivate such species in substitute environments, as on federally protected lands or under the more readily controlled conditions afforded by botanical gardens.

4a. What should be the role of the Federal government?

The federal government should regulate international trade in endangered species and should also set aside and protect appropriate tracts, as determined by the actual location of endangered species. Most likely such species will occur in groups in certain tracts, as in remote areas where endemism is highest, but whose integrity may be threatened by economic exploitation or use which is incompatible with the survival of endangered species.

4b. What should be the role of the State government?

The state governments should proscribe from trade, collection, and molestation all species which are threatened with extinction. These governments should also cooperate with the federal government in setting aside certain tracts as perpetual reservations.

4c. What should be the role of the scientific community?

The community of research plant systematists, through its professional botanical societies, should prepare lists of species to be protected and create machinery with the societies for the revision of such lists. Lists of endangered plant species would provide the federal government with a basis for declaring and setting aside botanical preserves and state governments a basis for declaring which species are to be protected.

5. What is the rate of decline of presently endangered species? Are there species likely to be faced with extinction within five or ten years?

Yes. Some are perilously close to extinction as species of the native flora, such as the Florida Torreya (*Torreya taxifolium*), now limited to a few bluffs along the Apalachicola River, and the Monterrey Cypress (*Cupressus macrocarpa*) found wild only on some rocky promontories around Monterrey Bay in California. The former would surely become extinct but for some commendable efforts at cultivation in botanical gardens in the Southeast. The latter is safe from total extinction because of its ease of cultivation and desirability as a landscape shrub.

As with insects in the animal kingdom, there is insufficient general data about many smaller, less conspicuous herbs for their status to be easily assessed. A large number of native species are scarce, but whether they are near extinction is not known, except perhaps by students of the plant groups to which they belong.

It is important to note that in dealing with extinction of wild species we cannot consider a species represented by only one or a few individuals as functionally existent, for most species, to be viable in evolutionary terms, require a substantial population whose members comprise a breeding system. Hence the importance of preserving environments or substantial tracts, rather than mere individual plants.

6. What are the economic and commercial impacts resulting from the reduction in the diversity of the flora?

Among the deleterious effects of reduction in floristic diversity is a reduction in gene-pool diversity, which limits the adaptability of surviving species. Put another way, the fewer the co-existent species, the less flexible the total flora is with respect to stress or change.

The closer we approach plurispeciation or monospeciation, the more disease-susceptible the flora. A field of corn is much more liable to decimation by disease than a meadow or field of mixed native wild flowers.

Extirpation of plant species destroys possible future sources of valuable plant products. For example, who would have guessed ten years ago that an inauspicious water mold (*Achlya ambisexualis*) would turn out to be the source of sex hormones chemically equal to those produced by human beings?

Finally, although a species may be rare, its position in a food chain or food matrix may be critical, and hence its extinction biologically very disruptive. Near extermination of the wolf has led to today's deer—to cite the best known simple example.

7. How can the seed-bank concept be used most effectively to preserve endangered species?

While subject to success in mastering techniques for continued viability during extended seed dormancy, the use of seed banks is of dubious value with endangered species, primarily because most have narrow ecological amplitudes and have evolved in very specialized environments whose characteristics remain unquantified.

8. How much of the U.S. flora is endangered? Which cryptogams, if any, should be included?

Extrapolating from the California survey, perhaps 1000 species, and these (but for a few ferns) include only flowering plants. There are no data available on endangerment of flowerless plants.

9. Would it be feasible to append "and flora" after fish and wildlife in H.R. 4758? What changes would have to be made?

In general, it would be feasible to so include flora, with plant defined as any angiosperm and gymnosperm organism, including all trees, shrubs, vines, and flowering herbs, as well as ferns, and with other changes as provided in H.R. 37. The applicability of cited acts has not been determined.

THE NEW YORK BOTANICAL GARDEN,
Bronx, N.Y., April 23, 1973.

HON. JOHN D. DINGELL,
House of Representatives,
Washington, D.C.

DEAR REPRESENTATIVE DINGELL: Further to my earlier communications to you regarding the desirability of including plants in the forthcoming legislation to protect endangered species of fish and wildlife, I submit the following statement, which was approved by the American Association of Botanical Gardens and Arboreta at its annual meeting held in Arcadia, California, April 15-April 18, 1973.

The provisions of this resolution clearly reflect the concern of this organization, numbering more than 300 professional members and over 100 institutions, and express its willingness to take responsible action.

I communicate this resolution to you in my capacity as chairman of the AABGA committee on endangered species.

Sincerely yours,

HOWARD S. IRWIN, *President.*

Enclosure.

The AABGA strongly urges the expansion of coverage in the forthcoming bill on the protection of endangered fish and wildlife to include plant life.

The AABGA further urges that within such legislation means be provided for the proposal and revision of lists of plant species to be considered endangered and that cognizance be taken of the capability and willingness of this organization, representing a nationwide membership of botanists and horticulturists, to elicit and coordinate information and recommendations regarding endangered plant species, and to assume this responsibility alone or in concert with other appropriate professional bodies.

SAFARI CLUB INTERNATIONAL,
Inglewood, Calif., April 24, 1973.

HON. JOHN D. DINGELL,
Chairman, Subcommittee on Fisheries, Wildlife, and the Environment, House Committee on Merchant Marine and Fisheries, Washington, D.C.

DEAR MR. CHAIRMAN: Safari Club International consists of nine chapters located throughout the United States and Mexico. Its membership is composed

of sportsmen conservationists, and it is vitally concerned with H.R. 37 and H.R. 4758, Endangered Species Conservation Act of 1973, now pending before your Committee.

On behalf of Safari Club International, we respectfully submit the following comments for the Committee's consideration.

We do not take exception to the purpose of this legislation, and in fact, this organization is committed to effective conservation of habitat and fauna.

However, there are at least two major provisions of H.R. 37 which we believe are unsound and objectionable. The first is that H.R. 37 would, by the provisions of Section 4, empower the Secretary of the Interior to declare any species regardless of its national origin an "endangered species" on the basis of five criteria spelled out in Section 4. None of these criteria provide for consultation with the government in the country where the species exists. It is thus not only possible, but likely that the Secretary will designate animals which are perfectly legal to hunt in the country of origin.

Such a system which arrogates to this country the power to declare "off limits" animals in another country is not only unsound and of dubious legal validity, but will also quite likely be regarded as offensive to such countries who will view this as officious intermeddling into their internal affairs. Thus, Section 4 should be confined solely to United States fauna and that of countries who have expressly entered into bilateral or unilateral treaty arrangements with this country to pursue jointly conservation efforts of this kind.

A further defect in H.R. 37 is that Section 4 empowers the Secretary virtually unilaterally to determine which animals should be placed on the list. To be sure, Section 4 provides for review procedures if any party objects to the inclusion of a given animal on the proscribed list. This is patently unacceptable for two reasons:

(1) Foreign nations who object to inclusion of their animals on this list will not subject themselves to this procedure. It violates their legitimate claims to sovereignty.

(2) The Secretary can deny a review hearing if, on his own unchecked judgment, the person seeking review has not "presented substantial evidence to warrant such a review." This makes the Secretary the judge of the propriety of his own actions and does violence to basic concepts of fairness and due process.

We respectfully believe the enormity of these procedures can best be shown by a hypothetical illustration. In Kenya and other African countries, safari hunting and related expenditures comprise and important part of their national income and contributes to the prosperity and well-being of the population. In most of these countries the leopard is *not* an endangered animal, though in other parts of the world it is. Accordingly, it is legal to hunt leopard in certain countries upon payment of license fees and compliance with local regulations.

However, because the leopard is endangered in other areas, the Secretary places it on the endangered list which effectively precludes American hunters from hunting it in Kenya and other countries where it is not endangered. This is unfair to the American hunter vis-a-vis hunters of other nationalities. This is an unwarranted burden on the right to do business and conduct the internal affairs of the nation concerned, and these nations are typically resentful of United States intermeddling in their affairs. But of most importance, the United States cannot control the conduct of hunters of other countries who will continue to hunt these animals and do so legally pursuant to the laws in the country of origin. Therefore, there is no practical purpose to be served by this unwarranted attempt to legislate concerning the affairs of other countries.

Finally, the "exceptions" provisions of Section 8 do not in any way ameliorate the impact of the foregoing provisions.

We respectfully request that these comments be made a part of the hearing record on H.R. 37 and H.R. 4758.

Sincerely yours,

THOMAS E. BASS.

WASHINGTON, D.C., April 16, 1973.

Re Proposed amendments to Endangered Species Act.

Hon. JOHN D. DINGELL,

Chairman, Subcommittee on Fisheries, Wildlife, Conservation and the Environment, Washington, D.C.

DEAR CHAIRMAN DINGELL: As counsel for the Fur Conservation Institute of America, I submit the following suggestions for changes in the proposed amendments to the Endangered Species Act as proposed by the draft bill submitted to

the House by the Secretary of Interior and as contained in H.R. 37, the Dingell Bill :

1. Section 2(d) (7) defines "foreign commerce" as used in the act. The definition includes, among other things, "any transaction (1) between persons in one foreign country, or (2) *between persons in two or more foreign countries.*" [Emphasis supplied.]

The Congress has no power to regulate the transactions between persons in these categories. Section 8, Clause 3 of the Constitution grants the Congress the right "to regulate commerce with foreign nations."

This power to regulate is confined to a limited area. The Supreme Court in *U.S. v. Holliday*, 70 U.S. 407, 18 L. Ed. 182 (1865) said at page 185 :

"Commerce with foreign nations, without doubt, means commerce between citizens of the United States and citizens or subjects of foreign governments."

In *U.S. v. Steffens*, 25 L. Ed. 550 (1879), the decision handed down shortly thereafter, the Supreme Court warned at page 552-3 :

"When Congress undertakes to enact a law, which can only be valid as a regulation of commerce, it is reasonable to expect to find on the face of the statute, or from its essential nature, that it is a regulation of commerce with foreign nations, among the several states, or with the Indian tribes. *If it is not so limited, it is in excess of power of Congress. If its main purpose is to establish a regulation applicable to all trade, to commerce at all points . . . , it is obviously the exercise of a power not confined to Congress.*"

See also *Henderson v. N.Y.*, 92 U.S. 259, 23 L.Ed. 543, 548 (1875). These early pronouncements on the limitations of powers which may be exercised by Congress under the commerce clause have been extended only slightly but indeed not sufficiently to encompass the transactions referred to in Sec. 2(d) (7) (1) (2) quoted above. Extensions relate, so far as we can determine, primarily to conspiracy cases, SEC cases and similar matters. The test of each of these instances is whether the non-U.S. activities sought to be regulated "have substantial effect on commerce between the U.S. and foreign countries." *S.E.C. v. Myers*, 285 F.S. 743 (1968) ; *Vanity Fair Mills v. T. Eaton Co.*, 234 F. 2d 633, 641 (2 Cir. 1956) ; *Grand Jury Investigation of the Shipping Industry*, D.C.D.C. 186 F.S. 298, 311.

The definition of foreign commerce as set forth in Sec. 2(d) (7) (1) and (2) does not fall within the rule as to the activities over which Congress is given regulatory powers under Sec. 8, Clause 3 of the Constitution, do they fall within the perimeters of the "substantial effect" doctrine as spelled out by the courts.

For these reasons, in order that the amended act will not some day be declared to be an unconstitutional extension of the power of Congress, we suggest that the term "foreign commerce" not be defined in the act. Instead, its meaning should rest upon the meaning of the term as used in the Constitution as that term has been interpreted by the courts for many years past.

2. Sec. 4(a) (b) (c) of the Administration bill sets forth certain activities which shall be "unlawful" as to any "person subject to the jurisdiction of the United States." However, none of these activities are required to have been performed in a knowing and willful manner. They are simply made unlawful per se. The penalties for the "unlawful" activities set forth in Sec. 4 are set out in Sec. 6 of that bill. The penalties include a \$10,000 civil penalty fine (6(a) (1)). Here too, no proof is required that the violation was either knowingly or willfully done or that the accused in the exercise of due care should have known that what he did was unlawful.

The criminal penalty for the unlawful activities, as spelled out in Sec. 4, is set forth in Sec. 6(b). Here, the rule of the 1969 act is toughened up. In the new act, a conviction can be obtained solely on proof that the violation was a "knowing one," whereas under the 1969 act, proof would be required that the offense was committed knowingly and willfully before imposition of a criminal penalty would be authorized.

There is no basis for changing the existing statute in this respect. The present requirements of the law have not been shown to be a hardship or to create any difficulties in meeting the required quantum of proof.

In *U.S. v. Murdock*, 290 U.S. 389, 394, 1933, the court said :

"The word [willful] often denotes an act which is international or knowing and voluntary as distinguished from accidental, *but when used in a criminal statute*, it generally means an act done with a bad purpose * * * without justifiable excuse * * *, stubbornly, obstinately, purposefully * * *."

The lack of any requirement in Sec. 4 or Sec. 6(a) (1) (the latter being the criminal penalty section) that the activities be either knowing or willful, and the lack of any requirement in Sec. 6(b) (the civil penalty section) that the

activities be both knowing and willful, would permit the imposition of extremely harsh civil and criminal penalties for activities, many which are bound to take place abroad, and which are subject to regulations and laws in effect in foreign countries—laws and regulations of which persons accused of violation would have little if any source of knowledge. Ample protection should be inserted in these penalty sections to adequately protect against the imposition of severe penalties where violations are committed unknowingly, particularly in the criminal penalty section where, as under present law, a willful and knowing culpability standard should be included.

3. Further protection now afforded alleged violators of the act is removed in the proposed amendment without any justification and without any experience which would demonstrate the need for any change.

Under present law, if a civil penalty is assessed after the hearing, the respondent may have a trial *de novo* before a district court of the United States. No cases have arisen which indicate any hardship or fault with the protection provided an accused who can be fined \$10,000 for each alleged offense, a penalty not unsevere. The civil penalty hearing officers are unguided by any established rules of evidence such as prevail in the courts. Hearsay of the rankest nature is permitted in such hearings. Such proceedings are not subject to the federal rules of civil procedure. Each hearing officer concocts his own rules for the conduct of such proceedings. We know whereof we speak as we are presently engaged in such a proceeding.

There is no legitimate reason for reversal of the trial *de novo* provisions of the 1969 Act. The penalties are severe. Certainly, until experience demonstrates that the present *de novo* trial provisions are not justified, they should not be deleted from the statute.

The "substantial evidence" rule incorporated in the newly proposed bill for guidance of the district courts on an appeal does not solve the problem in the type of appeal proposed to be granted under the new bill. For, as we have pointed out, hearsay on hearsay is permitted in civil penalty proceedings. In these circumstances, no opportunity is provided for cross-examination of the persons whose statements are reported by others. In the civil penalty proceeding under the 1969 Act, I would venture to say that 70% of the testimony on the basis of which substantial fines could be imposed (many times \$10,000) was pure hearsay with no opportunity available for counsel for the respondent to cross-examine those on whose alleged statements and alleged knowledge the imposition of every severe penalties could be based.

4. We think there is no justification for the "look alike" rules set forth in Sec. 7(c) of H.R. 37. The taking, etc. of a species not endangered with extinction should not be subject to harsh civil and criminal penalties simply because it "resembles in appearance" a species that is endangered. Any expert in this field knows that nature creates "look alikes." A man should not be sent to jail or fined \$10,000 per offense unless it be shown that he knew or had reason to know that the wildlife transported, taken, or otherwise dealt in was in fact an endangered species, the taking, shipping, etc. of which was regulated or limited by law.

Sec. 7(c) also presents substantial difficulties of identification of wildlife for "enforcement personnel." Civil and criminal penalties should be authorized to be imposed only when there is adequate proof of a violation of a ban in traffic of endangered species, not a ban on a species that looks like an endangered species—simply because it puts the enforcement personnel to "substantial difficulty" in identifying the wildlife involved.

CONCLUSION

The fur industry again takes this opportunity to applaud the efforts of the U.S. to provide protection to endangered species and to provide world leadership in this effort; but, there are very "substantial difficulties" involved with the above mentioned bills, including knowing which animal is the endangered species, whether a particular animal is on the endangered species list, whether or not it was taken, or transported or sold in some manner controlled in the country of origin, what the actual country of origin's regulations are, whether a particular animal was caught or transported by legal or illegal means or by someone with or without a license, or was caught in season or out of season—*et cetera ad infinitum*. Severe criminal or civil penalties should not be authorized to be imposed without adequate provisions for due process and for the requirement of

sufficient proof of the commission of an offense—proof by competent evidence—and provisions for discovery proceedings and other protections available in civil and criminal court proceedings.

Our criticism of the Administration bill and of the other bills is that they would largely strip members of the fur industry of reasonable protection, the protection of normal rules of evidence, and would substantially reduce the proof necessary and appropriate in circumstances involving severe civil and criminal penalties. The fur industry is an ancient and venerable business. It can and will bring its activities into line with reasonable regulations for the protection of endangered species and in line with reasonable conservation measures as to other animals. However, it cannot and will not, willingly, submit to the demands of those who would make it impossible or illegal to continue in business simply because they are convinced that the killing of wild or even ranch-raised animals for the purpose of obtaining their skins for use as clothing or as adornment is immoral and must be stopped or severely crippled.

We have no question in our minds but that those who are of that philosophy come by their convictions honestly, but we cannot and do not agree with that philosophy, nor do we believe that the majority of the public do. We urge that your Committee therefore not be swayed by the conservationists' demands that the Congress legislate away the historical right to deal in wild and ranch-raised animal furs in a legitimate, commercial trading operation which has, and we hope always will, serve the needs and desires of consumers for the continued, but controlled, use of natural furs and the manufacture of warm and stylish clothing.

Very truly yours,

JAMES R. SHARP,
Counsel for Fur Conservation Institute of America.

APRIL 17, 1973.

MR. NATHANIEL P. REED,
*Assistant Secretary for Fish and Wildlife and Parks, Department of the Interior,
Interior Building, Washington, D.C.*

DEAR MR. REED: The enclosed letter from counsel for the Fur Conservation Institute raises a number of issues concerning the extent to which the Congress can or ought to legislate, with respect to the protection of endangered species.

So that the Committee may have the best information available to it when it begins its consideration of the endangered species legislation, I would appreciate it if you would review Mr. Sharp's letter and provide us with whatever thoughts you may have on the points which he raises.

While no date has yet been set for the mark-up of this bill, I believe that this may take place reasonably soon. If we could hear from you within the next two weeks on this point, your response would, I believe, be most useful to the Committee.

Sincerely,

FRANK M. POTTER, Jr., *Counsel.*

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., May 25, 1973.

MR. FRANK M. POTTER, Jr.,
Counsel, Committee on Merchant Marine and Fisheries, U.S. House of Representatives, Washington, D.C.

DEAR MR. POTTER: You have requested that we review comments made by counsel for the Fur Conservation Institute of America on certain provisions of H.R. 4758, the administration's endangered species bill now pending in your Committee. I have asked our Solicitor's Office to provide me with a legal memorandum analyzing the bill in light of those comments, which I enclose.

If we may be of assistance to you in this or other matters of mutual concern, please feel free to call upon us.

Sincerely yours,

CURTIS BOHLEN,
Acting Assistant Secretary of the Interior.

Enclosure.

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SOLICITOR,
Washington, D.C., May 18, 1973.

MEMORANDUM

To: Assistant Secretary for Fish and Wildlife and Parks.
From: Associate Solicitor, Parks, Recreation and Wildlife.
Subject: Comments of the Fur Conservation Institute of America on H.R. 4758.

This responds to your request for our views on the subject. We will address the points made in the Institute's testimony in the order presented.

1. EXTRA-TERRITORIAL JURISDICTION AND THE DEFINITION OF FOREIGN COMMERCE

A question has been raised as to the possible unconstitutionality of the portions of the definition of "foreign commerce," in § 2(d) (7) of H.R. 4758 [hereinafter "the bill"], which would effectively extend Federal jurisdiction to certain foreign transactions in endangered species. Specifically, the bill would prohibit the sale, delivery, receipt, carriage, transport, or shipment of endangered species in interstate or foreign commerce by persons subject to the jurisdiction of the United States. Foreign commerce is defined, in part, as "any transaction (1) between persons within one foreign country, or (2) between persons in two or more foreign countries. . . ." [§ 2(d) (7)] The Institute's objections are grounded upon an interpretation that paragraphs 4(a) (3) and 4(a) (4) refer to the foreign commerce of the United States, within the meaning of the Commerce Clause of the Constitution. Const. Art I, sec. 8, cl. 3. We do not agree.

There is little question that the Congress may constitutionally prohibit the actions abroad (so-called "extra-territorial jurisdiction") of persons subject to the jurisdiction of the United States under authority of the "Law of Nations" clause of the Constitution. Const. Art. I, § 8, cl. 10 [Cf. *United States v. Rodriguez*, 182 F. Supp. 479 (S.D. Cal. 1960) *aff'd sub nom., Rocha v. United States*, 288 F. 2d 545 (9th Cir. 1961), cert. denied 366 U.S. 948 (1961); *United States v. Pizzarusso*, 388 F. 2d 8 (2d Cir. 1958; *United States v. Bowman*, 260 U.S. 94 (1922); 18 U.S.C. §§ 2381, 1111(b), 1651, 1659] However, in *Steele v. Bulova Watch Co.*, 344 U.S. 280, 285 (1952), the Supreme Court held that the legislation of Congress would not be interpreted to reach acts committed beyond the boundaries of the United States unless a contrary legislative intent appeared. [Cf. *United States v. Bowman*, *supra*, at 97-99; see, e.g., *Skiriotes v. Florida*, 313 U.S. 69 (1941); *Branch v. Federal Trade Commission*, 141 F. 2d 31 (7th Cir 1944).]

It is our view that Section 4 of the bill would allay any question of Congressional intent respecting the extra-territorial applicability of the bill. Paragraph 4(a) (1) forbids certain persons to act as importers or exporters. Cases construing the term import have made it clear that even when one sends goods from abroad, he is an importer if he was, in fact, the operative or efficient cause of an importation. *Hooven & Allison v. Evatt*, 324 U.S. 652, 662-664 (1945).

Paragraph 4(a) (2) would prohibit the taking of endangered species upon the high seas.

Paragraphs 4(a) (3) and 4(a) (4), when taken together with the definition of "foreign commerce" [§ 2(d) (7)], would apply to specified acts by persons subject to the jurisdiction of the United States, even when they are abroad. "Foreign commerce" is defined and used in the bill merely as a 'term of art' which partakes more of the nature of a jurisdictional statement than a definition of foreign commerce as that term is defined in cases construing the commerce clause. Such jurisdiction is bottomed in the inherent authority of any nation to control the extra-territorial conduct of its citizens under the Law of Nations, as above described. The definition of foreign commerce in the bill is not confined to the reach of the commerce clause of the constitution and the cases construing it. It is not the foreign commerce of the United States to which paragraphs 4(a) (3) and 4(a) (4) refer.

2 CULPABILITY

It has been suggested that a "knowing and willful" standard of culpability should be adopted as to both the criminal and civil penalty provisions of the bill. [Secs. 6(a) (1), 6(b)]

Paragraph 6(a)(1) of the bill, the civil penalty provision would carry forward the absolute liability standard of the civil penalty provision of the 1969 Act, 16 U.S.C. § 668ec-4(a)(1). However, the criminal provision of the bill [sec. 6(b)] would change the culpability standard of the corresponding provision of the 1969 Act from "willfully" to "knowingly." In order to remove any suggestion the bill must be read to require proof that the accused knew he was violating the law, § 6(b) states that it is *knowledge of actions* which must be proved, not that the accused knew he was violating a law. [Cf., *United States v. International Minerals and Chemical*, 402 U.S. 558 (1971)] Although the principle that "ignorance of the law is no excuse" is well accepted in the law, the wording of the 18 U.S.C. § 43(b), which is similar to the phraseology of the criminal provision of the 1969 Act, has in one case been held to require proof that the defendant knew he was violating the law. *United States v. Zimmerman*, Crim. No. 72-820 (E.D. La., decided October 25, 1972)

The same recommendation in favor of stricter culpability standards was made before the Senate Subcommittee then considering passage of the 1969 Act. That panel voiced deep concern about defenses such as ignorance of the law and expressly rejected the recommendation. [Hearings on S. 1280 Before the Subcomm. on Energy, Natural Resources, and the Environment of the Senate Comm. on Commerce, 91st Cong., 1st Sess., Ser. 91-10, at 171-173 (1969)]. Counsel for the Subcommittee pointed out at that time that with respect to civil penalties "the safeguard exists in the ability to compromise," but that a "premium is paid for ignorance" of the law under the 1969 Act. [*Id.* at 172]

Because persons subject to the jurisdiction of the United States are the only persons who could be punished under the bill, and they would, generally speaking, be presumed to know the law, it would appear that the reasoning of the Congress with respect to the 1969 Act would remain applicable with respect to paragraph 6(a)(1) of H.R. 4758. It should be noted that a similar absolute liability standard was adopted in the civil penalty provision of the Marine Mammal Protection Act of 1972, § 105(a). 86 Stat. 1036.

S. DE NOVO V. SUBSTANTIAL EVIDENCE REVIEW OF CIVIL PENALTY DECISIONS

The provision in section 6(a)(1) for District Court review of civil penalty decisions on the basis of the substantial evidence rule is in accord with modern thinking on the subject. [See, e.g., § 105(a), 86 Stat. 1036; § 1(4), 86 Stat. 1064; § 1(1), 84 Stat. 1606; § 106(b), 83 Stat. 754] Due process of law is not denied where an opportunity for trial *de novo* is not afforded. [*Lloyd Sabaudo Societa v. Elting*, 287 U.S. 329, 335 (1932); *Elting v. North German Lloyd*, 287 U.S. 324, 328 (1932)] Indeed, if Secretarial hearings are to be taken seriously, it would seem they should be accorded the same deference as are other reviewable, administrative actions.

The subpoena powers which § 6(a)(2) of H.R. 4758 would create are similarly representative of modern thinking in civil penalty statutes, and would enable the Secretary among other things, to compel the attendance of witnesses and meet objections to hearsay.

If we may be of further assistance in this matter, please call upon us.

BERNARD R. MEYER.

STATE OF CALIFORNIA,
DEPARTMENT OF JUSTICE,
OFFICE OF THE ATTORNEY GENERAL,
Sacramento, May 23, 1973.

Re H.R. 4758 (Endangered Species Conservation Bill of 1973).

Hon. JOHN D. DINGELL,
Chairman, Subcommittee on Fisheries and Wildlife Conservation, House
Merchant Marine and Fisheries Committee, Washington, D.C.

DEAR CONGRESSMAN DINGELL: We have recently been advised that your subcommittee is presently considering H.R. 4758 (Endangered Species Conservation Bill of 1973).

As you may be aware, the State of California has protected endangered species since 1970 when sections 653(o) and 653(p) were added to the Penal Code of the State of California. For your convenience, copies of those sections are attached. Section 653(o) is similar to New York State's Mason Law in that Cali-

ifornia protects certain species that the Secretary of the Interior has not yet found to be endangered and therefore are not protected by federal law.

One example is illustrative of the value of allowing states such as New York and California to contribute to the effort to protect species which are being subjected to commercial exploitation and are threatened with extinction. In 1971 the California legislature gave protection to several additional species threatened with extinction including the kangaroo. At that time, vast numbers of kangaroo were being killed for pet food and hides. Effective April 1, 1973, the Australian government completely banned the export of kangaroo hides and meat. The Secretary of the Interior is presently considering the proposed addition of several species of kangaroo to the federal endangered species list. Hopefully, this action has not come too late.

We join with the Attorney General of New York in strongly recommending that your subcommittee amend H.R. 4758 to allow states to have more restrictive laws to protect endangered species. We are also of the opinion that your own bill, H.R. 37, presents the best approach in this regard.

Sincerely,

EVELLE J. YOUNGER.

Attorney General.

(Attachments may be found on p. 385.)

ALASKA PROFESSIONAL HUNTERS ASSOCIATION,
Anchorage, Alaska, February 2, 1973.

Congressman JOHN D. DINGELL,
House of Representatives,
Washington, D.C.

DEAR CONGRESSMAN DINGELL: Thank you for your letter of January 19, 1973 and the enclosed copies of H.R. 37. We appreciate the opportunity to comment on this bill.

We have spent considerable effort reviewing H.R. 37 as well as soliciting comments from biologists in various organizations and offer our suggestions in the light of constructive criticism. The bill is the most comprehensive piece of legislation to evolve concerning endangered species and indicates intensive effort of concerned individuals such as yourself.

Before discussing the bill there are two comments we would direct to you. The first is the problem of Alaska being a huge and unique area rich in wildlife and wilderness. Legislative solutions addressed to wildlife problems in the lower forty eight contiguous states often restricts game management activities in Alaska without justification and in the end proves detrimental to maintaining viable populations.

Our second comment regards definitions of endangered species. We feel it is imperative that resident game species declared endangered should be declared endangered state by state. May I refer to the second page of your press statement dated January 9, 1973 containing the statements about wolverine. Wolverine could well be endangered in Minnesota and Idaho and should receive due consideration. We feel that any legislation to declare wolverine endangered in the lower 48 would be an all encompassing act including Alaska as well. This would be unfortunate since our wolverine population is in good condition and distributed state wide. Additionally, wolves are in dire circumstances in the lower 48 and undoubtedly will be classed as endangered. Considerable emotionalism and hysteria has been directed to the treatment of wolves in Alaska obscuring the fact that we have an excellent viable population. We cannot dispute certain instances of their abuse but the fact remains that to class Alaska's wolves as endangered would be grossly unfair and many prove detrimental to ungulate stocks in certain areas. Grizzly bear in the lower states are in a precarious situation due to encroachment by human activities. If they are declared endangered we must exercise extreme caution to prevent Alaska grizzlies from being included as endangered.

Additionally, the National Park Service management program in Yellowstone Park is open to question as to enhancing the future outlook for grizzly bear. The present N.P.S. policy is to close all open garbage dumps and transplant grizzlies *once*. The second time the bear is destroyed. On September 19, 1972 a Grizzly Bear meeting was held at Mammoth Hot Springs in Yellowstone Park. John and Frank Craighead gave an oral presentation stating that if present N.P.S. policies are followed the grizzly population will be exterminated

from the park as well as adjacent areas by the year 2000. It is quite a paradox whereby the government is acting to protect endangered species while one of its own agencies follows a plan of extermination.

We are requesting that you delay any action on the endangered species bills in Congress until after your April trip to Anchorage. We urge you to spend as many days as possible in Alaska to gain first hand knowledge of the state. There are more important problems confronting Alaska at this time than endangered resident species.

We must compliment you on the Land Acquisition and Agency Compliance section of H.R. 37. This is the key to maintaining viable wildlife populations. We would suggest that the Department of Agriculture be directed to set aside land under its jurisdiction (Forest Service especially) for endangered species habitat. The Corps of Engineers should also be restrained with a short leash and required to conform with this act.

In Section 4, "Determination of Endangered Species", we feel there must be a more clear cut system of checks and balances for determining what is endangered. We sincerely think the states should have the strongest voice whether a resident species should be classed endangered. We do not debate the point that the Federal Government should control migratory bird species.

Our thoughts in the preceding paragraph carry over into the section titled "Cooperation with the States". Section 6 b states the Secretary *may* enter into agreements for administration and management of areas. We feel the Secretary should control land access but delegate management to the states. Section c states again that the Secretary *may* delegate, etc. Our thoughts remain the same, the state should have the management authority of resident species.

One noticeable problem with Section 6 is the omission of provisions for assisting states to fund management problems. State Fish and Game departments are usually oriented towards management of game species with non-game species not directly entering into program planning. We doubt the states ability to fund extensive additional management programs without federal assistance. We cannot envision a state not being interested in widespread management program if funding is available.

We do have pertinent comments regarding Section 7 c (line 15, page 13). This section could eliminate recreational hunting of brown and grizzly bear in Alaska. If grizzly bear are declared endangered in the lower 48 the Secretary could place Alaskan grizzly/brown bear on the list because you can't tell the difference by examination of the skins. It is conceivable that black bear could be placed on the list if Glacier bear are classified as endangered. Glacier bear come in many color variations with some so closely resembling the usual black bear color that it is only a matter of opinion as to what the hunter has taken.

Section 12, Conforming Amendments, leaves us disturbed because the Secretary has the authority to declare any animal endangered regardless whether it is resident species or not. Our concern is based on the premise that political pressure will determine what species will be classified as endangered. With the strong movement of the anti hunting groups we feel our concern is justified. We cannot visualize the Secretary acting in the best interest of conservation while under undue pressure of this type.

Following are suggestions we feel would enhance the ability of the bill to protect wildlife without creating undue hardship on the people as well as satisfying the state rights advocates.

We think the publication "A Law for Wildlife" published by the Conservation Department of Winchester-Western Division, East Alton, Illinois should be utilized as a working model for any endangered species legislation involving resident species.

Any endangered species legislation should incorporate the words "non game species" in the title since wildlife classified as "game" is already receiving the benefit of the sportsmans dollars and management policies while our endangered list is comprised almost completely of non game species.

Instead of transferring control to the Secretary of Interior we suggest a commission be established to authorize what species shall be classed endangered and, more importantly, *in what states*. The commission would be comprised of three knowledgeable wildlife experts appointed by the Secretary of Interior and three state Fish and Game commissioners selected by the International Association of Game, Fish and Conservation Commissioners with the Secretary being the seventh member and acting as chairman. A majority of four votes would rule. This would provide the best system of checks and balances in the battle of the states rights issue.

The Marine Mammal Act has resulted in the Federal government removing management control of marine mammals from the states. The Alaska Department of Fish and Game is ready to submit their management proposals to the Secretary of Interior with the hope they will be accepted. We have no illusions that Alaska will be successful because game management control is not likely to be returned regardless of the program submitted. We find the "cooperation with the states" section in H.R. 37 written in the same manner as the Marine Mammal Act which leads us to assume the same procedures will be followed thereby eliminating the states as a management agency.

The commission we recommended should establish a set of minimum management standards for each species which the states would have to meet. Below the minimum would result in transfer of control of each species not having a proper management program to the Secretary of Interior. In this case the state would have to demonstrate the ability to reevaluate the problem and design a workable program for each specie that did not meet minimum standards and convince the commission they had rectified the situation. Complying with minimum standards would automatically vest management authority with the state and result in financial help by the Federal government for programs. A review of the state program for each specie that did not meet minimum standards and convince the Federal government to demand management policies be implemented by the states without funding the additional expense.

Our comments are offered as constructive criticism and we trust they will be viewed in that light. Again, we thank you for the opportunity to present our thoughts.

We are looking forward to meeting you in April and will do our best to make your trip successful.

Kindest personal regards,

DARRELL FARMEN,
Executive Secretary.

TUCSON WILDLIFE UNLIMITED, INC.,
Tucson, Ariz., March 7, 1973.

Re House Resolutions 37 and 2735, Endangered Species Conservation Act of 1973, and other similar bills.

Hon. JOHN D. DINGELL,
Chairman, Subcommittee on Fisheries and Wildlife Conservation and the Environment, House Committee on Merchant Marine and Fisheries, U.S. House of Representatives, House Office Building, Washington, D.C.

DEAR MR. DINGELL: Tucson Wildlife Unlimited vigorously opposes this legislation. They appear to us to be thinly veiled attempts by the Federal Government to continue in its seemingly never ending usurpation of states' authority over resident wildlife species. The bills would give the Secretary of the Interior authority to determine what kinds of wildlife are rare and endangered, and they also give him the authority to assume complete jurisdiction over said wildlife species if he so desired. The tone of the legislation suggests that the Federal Government is better able to manage our wildlife than the states. A brief glance at the Federal Endangered Species List shows that this is not the case. The great bulk of the animals on the list are already under federal jurisdiction or are in the endangered predicament because of actions by federal agencies, i.e., federal predator control and rodent control programs, federal wetland drainage programs, and federal river manipulation and channelization programs. In essence, what this amounts to is that the Federal Government causes animals to be endangered (predator control programs of ferret and wolf, reclamation programs—Yuma Clapper Rail and various species of fish, farm subsidy programs—Prairie Chicken and others); then the Federal Government determines that these animals are endangered; and, then they take over jurisdiction.

Legislation enacted to prevent the extinction of wildlife is certainly commendable. In our opinion, the bills under consideration would *not* do this. We believe that the states rather than the Federal Government are in the better position to manage not only resident wildlife species but also endangered species found within their individual borders.

I am enclosing copies of correspondence to several states which will further illustrate our views. We would appreciate it very much if this letter, along with the attachments, can be read and included in the Hearing records.

Very truly yours,

SEYMOUR H. LEVY, *President.*

Enclosures.

TUCSON WILDLIFE UNLIMITED, INC.,
Tucson, Ariz., February 14, 1973.

Dr. CLARK M. HOFFPAUER,
Director, Wildlife and Fisheries Commission,
New Orleans, La.

DEAR DR. HOFFPAUER: Tucson Wildlife Unlimited, Inc. wishes to congratulate you on your recent very successful alligator hunt. We have followed with considerable interest the developments surrounding Louisiana's alligator hunt proposal. There has been numerous articles recently in various publications describing the Louisiana Alligator hunt. Apparently it was a resounding success.

The hunt was opposed by several protectionists' groups and Nathaniel Reed, Assistant Secretary for Fish, Wildlife and Parks. Perhaps there is not much difference between the two. If Nathaniel Reed had succeeded in stopping your efforts to manage the alligator in Louisiana because it is alleged to be rare and endangered elsewhere, we in Arizona could see the same concept applied here. The Mearns quail, for instance, is exceedingly abundant in southern Arizona, but it is reported to be rare and endangered in Texas. If Nathaniel Reed's logic were carried out, and his authority to do so allowed him, it would be foreseeable that our very desirable Mearns quail hunting season would be closed in Arizona because of the quail status in Texas. Actually, all kinds of wildlife are at one place or another rare and endangered. The common house sparrow, for instance, could be considered rare and endangered in Death Valley Monument where only a few pairs exist.

If there is anything we can do to aid you in your endeavors to implement future alligator management programs, please do not hesitate to call on us. We sincerely hope you are not forced to succumb to federal pressures in the future. Best of luck to you in your courageous endeavors.

Sincerely yours,

SEYMOUR H. LEVY, *President.*

TUCSON WILDLIFE UNLIMITED, INC.,
Tucson, Ariz., February 13, 1973.

Dr. MILO CASEY,
Director, Division of Game and Fish,
Department of Natural Resources,
St. Paul Minn.

DEAR DR. CASEY: We would like to offer our support for your proposed wolf management program. We understand that there is some opposition to it from protectionists' organizations and Nathaniel Reed, Assistant Secretary for Fish, Wildlife and Parks. Perhaps they are one and the same. If Nathaniel Reed succeeds in blocking your attempt to manage the timber wolf in Minnesota because it is rare and endangered elsewhere, we in Arizona can see the same concept applied here. The Mearns quail is exceedingly abundant in southern Arizona, but it is rare and endangered in Texas. If Nathaniel Reed's logic were carried further, and if his authority to do so allowed him, it is foreseeable that our very desirable Mearns quail hunting season would be closed in Arizona because of its status in Texas. Actually speaking, all kinds of wildlife are at one place or another rare and endangered. The common House Sparrow, for instance, could be considered rare and endangered in Death Valley National Monument where only a few pairs exist.

If there is anything we can do to aid you in getting authorization to implement your wolf management program, please do not hesitate to call on us. We hope you are not forced to succumb to federal pressures. Best of luck to you with your courageous endeavor.

Sincerely yours,

SEYMOUR H. LEVY, *President.*

TUCSON, ARIZ., September 1, 1972.

Dr. CLARK M. HOFFPAUER,
Director, Wildlife Fisheries Commission,
New Orleans.

DEAR DR. HOFFPAUER: I have recently read your reply to the National Audubon Society regarding their objection to Louisiana's forthcoming alligator hunting season (Gun Week, September 1, 1972). My congratulations to you on the most perceptive response to their telegram objecting to the hunt.

Their opposition to the hunt, for whatever reasons they give, is more easily understood when one realizes that the National Audubon Society is opposed to *any hunting* whether sporting or commercial, irregardless of what they say. After all, their actions should speak louder than their words.

It is too bad that the hunters and wildlife biologists of the country can no longer depend on organizations such as The Wildlife Society and the National Wildlife Federation, which they formed, to aid in the battle against the protectionists and the anti-hunters. Indeed, as N. A. "Bill" Winter, President of the National Wildlife Federation, recently stated, "It is not our business to promote hunting."

Again, orchids to the Louisiana Wildlife and Fisheries Commission and to you!

Very truly yours,

SEYMOUR H. LEVY.

P.S. As long as the alligator appears on the U.S. Department of Interior's Endangered List, where does that leave legitimately taken alligators taken in Louisiana as far as exportation across statelines are concerned?

UNIVERSITY OF ALASKA,
Fairbanks, Alaska, March 19, 1973.

Hon. Representative JOHN DINGELL,
House Office Building, Washington, D.C.

DEAR MR. DINGELL: I wish to make a comment with regard to H.R. 37. While I feel that the general intent of this bill is salutary and that it is advisable to strengthen our legal protection of endangered species, there appears to me to be real potential for trouble and difficulty in the January 3, 1973, version of this bill which is the only one that I have seen.

In Section 4 (a), it is stated that the "... species or subspecies of fish or wildlife shall be regarded as an endangered species..." By including the word subspecies, there is a host of problems generated. A subspecies is an entity that is even more a matter of opinion than is a species. A species is recognized "in the opinion of competent taxonomists" to paraphrase the Rule of Nomenclature. A subspecies exists to a much greater extent at the whim or opinion of an individual. Unless the basis for accepting a subspecies as valid is specified in the bill, there is room for all sorts of argument. As a case in point, C. Hart Merriam once classified the brown bears in Alaska, dividing them into a multiplicity of species and recognizing a separate *species* for many adjacent watersheds. These animals range widely and certainly would be unlikely to be biologically or reproductively isolated when in such close geographic proximity. In fact, his whole concept of *species* has been rejected, and no one is even now offering what he called species as subspecies. Another example is the gray wolf on the Kenai Peninsula of Alaska; the animals that did originally occur on the Kenai Peninsula were apparently extirpated. They were recognized by some workers as a separate subspecies. Currently, wolves have become re-established on the Kenai, and there may be some attempt by some people to re-recognize the subspecies even though it is highly unlikely that the present animals are anything but immigrants from one of the adjacent populations or subspecies if one wishes to recognize them as such.

It seems as though building in problems of such high probability as those that will be encountered with the determination of subspecies may in fact jeopardize our chances of successful prosecution of the entire endangered species program. On the other hand, a provision might be incorporated in the bill that would allow the relevant professional society such as the American Ornithologists Union in the case of birds and the American Society of Mammalogists, etc., to designate by resolution to the Secretary certain subspecies which are felt and agreed upon to be both generally recognized by professionals and considered to be endangered. If a resolution from such a body were required in order to designate a particular population as an endangered subspecies, the subsequent risk of professional argument about the validity of the taxon should be minimized.

May I offer my general encouragement and agreement with your efforts in wildlife conservation and my hope that you will accept the above comments as constructive criticism offered in a friendly spirit.

Sincerely yours,

FREDERICK C. DEAN,
Professor of Wildlife Management,
Head, Department of Wildlife and Fisheries.

STATE OF ALASKA,
DEPARTMENT OF FISH AND GAME,
Juneau, April 17, 1973.

HON. MIKE GRAVEL,
U.S. Senate,
New Senate Office Building,
Washington, D.C.

DEAR SENATOR GRAVEL: I wish to direct your attention to H.R. 37 "Endangered Species Conservation Act of 1973." The goals of this legislation are of the highest purpose, but its general terms of reference could further abrogate the right of individual states to manage and benefit from resident species of fish and wildlife. My Department has been concerned about recent federal legislation which has usurped the management role traditionally the responsibility of the several states. This trend is characterized by portions of the Marine Mammals Protection Act of 1972, the 1972 Treaty with Mexico which amended the Migratory Bird Treaty Act by including additional migratory birds, most non-migratory birds and mammals, Public Law 159, which restricts the use of aircraft in taking game, Executive Order 116431, which restricts the use of poison on federal lands, and certain aspects of the Rare and Endangered Species Act. While most of these actions provide for some degree of state participation in decision making, in practice, the states have not been effective in influencing federal actions. Furthermore, the level of funding provided the responsible federal agencies has not allowed them to assume, in a satisfactory manner, the responsibilities that have been taken from the states.

Certain of the objectionable features of much of the recent legislation could be mitigated if the states were treated as equal partners under the acts. To that end, I wish to offer some suggested changes to H.R. 37 so as to make it more nearly acceptable to the state while preserving the beneficial aspects of the bill.

The determination of when a species is endangered is particularly vague. The procedure for such a determination as set forth in Section 4 of H.R. 37 gives unlimited authority to the Secretary of Interior. I believe a broader representation is needed. Perhaps mandatory consultation and agreement from the affected states should be required when resident species are involved. Another approach would be to provide for a council comprised of the Secretary of Interior and a representative of the affected state, or states, as the case may be. This council might be augmented by members from the International Association of Game and Fish Commissioners, or such other broadly represented and nationally accepted organizations of states.

The need for a broad base for decision making is strongly suggested by the extremely vague wording of Section 4, lines 15, 16 and 17, and lines 18 and 19. Lines 15, 16 and 17 refer to all, or a "significant" portion of the range of a species or subspecies. Significant, is an arbitrary term that does not have a common meaning in an ecological sense. Some other term or designation should be substituted. Lines 18 and 19 include the phrase "or likely within the foreseeable future to become threatened with extinction". This opens an entirely new and far-reaching possibility to certain preservationists possessing unbounded imagination. In the minds of some individuals, all species of fish and wildlife are threatened with extinction within the foreseeable future. I believe the phrase should be eliminated from the bill.

Section 7(a) sets forth acts prohibited for species or subspecies declared endangered. The prohibitions do not clarify procedures to follow if the species is endangered only in a "significant" portion of its range. Apparently if a commercial or a recreational species is endangered in a "significant" portion of its range, all taking, exporting, etc., would become illegal. Such a law is patently absurd. For example, it is entirely possible that king salmon could become endangered in a major system, such as the Columbia River, and an endangered classification would result in prohibition of the use of the species throughout its range.

Section 7(b) provides for species about to become endangered, or those that might become endangered within the foreseeable future. Again, the Secretary was given carte blanche to prescribe regulations affecting such species. The objections voiced to Section 7(a) pertain here, but with even greater emphasis.

Section 7(c) provides unusual enforcement authority. This entire subsection should be discarded. Again using commercial fish as an example, it is conceivable that all commercial uses of salmon or crab could be prohibited merely because it would be difficult for enforcement people to distinguish one species or sub-

of the canned product from another. Historically, laws that provide such authority to enforcement officers, have failed. Because some animals and products are similar and difficult, though not impossible, to differentiate, there is never an adequate justification for prohibiting the use of a non-but similar species.

of Section 7(c) could eliminate the use of valuable furbearers, not merely because it would be difficult to distinguish specific differences in finished products.

Specific characters in determining rare or endangered species because of the uncertain taxonomic status of a number of species and wolves are good examples. Most modern biologists use subspecific designations for these species far exceeds the preservationists will seize upon these antiquated classifications for classifying geographic races as rare and endangered.

In summary, object to H.R. 37 on the ground that it concentrates too much authority in the Secretary's office, without appropriate checks and balances. A commission, or board approach, with mandatory representation from the affected state or states would alleviate many of the foreseeable problems. Designation and regulation of rare and endangered species should be a shared responsibility, especially when the connotation is applied to resident species.

I would appreciate learning where and when public hearings are scheduled for this bill.

Sincerely,

JAMES W. BROOKS, *Commissioner*.

AMERICAN FORESTRY ASSOCIATION,
Washington, D.C., March 28, 1973.

HON. JOHN D. DINGELL,
Chairman, Subcommittee on Fisheries and Wildlife Conservation, House Committee on Merchant Marine and Fisheries, House of Representatives, Washington, D.C.

DEAR JOHN: Again, pressures of other activities and time prevent me from testifying on endangered species legislation before your Subcommittee this week. We are greatly interested in your Bill (H.R. 37), however, and wish to submit this brief statement for the record:

The American Forestry Association believes strongly in an endangered species program for fish and wildlife and is pleased to see legislation initiated for a similar protection of endangered flora. Our responsibility to future generations and to the quality of life on this Earth dictate that we show greater respect for all other forms of life and seek to minimize man's adverse impact on other species. The purposes and objectives of H.R. 37 to strengthen the endangered fish and wildlife conservation program and to extend it to species and subspecies "likely within the foreseeable future to become threatened with extinction" are highly desirable. So are the provisions that call for a one-year study of species and subspecies of endangered plants, trees, and other flora.

My reaction to H.R. 37 is that it constitutes a strong federal action but fails to bring in the state fish and wildlife agencies as equal partners. The urgency of an endangered species program demands that all available forces be marshalled into a single, unified effort. The proposal of H.R. 37 to make the federal government the dominant force over endangered fish and wildlife could only alienate the states who traditionally claim legal jurisdiction over fish and resident wildlife. Consultation by the Secretary of Interior with affected states does not constitute partnership effort.

The federal government alone does not have the necessary manpower, enough money or sufficient local knowledge to accomplish the objectives we all support. Without state enforcement, state refuges and management programs, and without state agreement on species in danger, effective protection cannot be expected. States will not cooperate fully unless they have a stronger voice and a larger role in the program. Jurisdictional disputes, already a problem in fish and wildlife management, would be intensified under this legislation. Why not set up a joint federal-state program, with strong federal guidelines, and grants to the states to carry out details of protection and management. Federal agents could then concentrate more on migratory species and the import-export traffic of endangered species.

As examples of federal supremacy, Sec. 6 provides only for federal "cooperation" and "agreements" with the states and "consultation" before acquisition of land. It provides that the Secretary may delegate authority to the states to regulate the taking of endangered species, an authority already claimed by the states, and it allows the states to be more restrictive than federal regulations but not more liberal. It is easily possible that a species endangered in one portion of its range might be over-abundant and in need of liberal harvest in another. Again, the states need to be partners in making such determinations.

Not wanting to appear negative with respect to their legislation, however, there are many good features. Already mentioned are the study of endangered flora and species likely to become endangered. Its application to any animal, game or nongame and to any portions of endangered animals is good. In Sec. 4(2) I would not try to define the various causes of endangerment but make the law applicable to any endangered species whatever the cause. I particularly support the coordination of this program with other federal activities so that all federal lands and resources are utilized for the objectives of this bill. Land acquisition is, of course, a desirable and necessary tool but emphasis should be on management and regulation rather than ownership of land. Adequate control of imports and exports is desirable, and I think we need to be particularly restrictive where commercialization is involved. It is desirable, too, that closely related species that cannot be distinguished from endangered ones come under the control of the Secretary.

Enforcement provisions appear to be adequate, but I wonder about the use of civil courts and civil penalties rather than criminal prosecution of violators. The forfeiture of seized wildlife to federal authorities rather than to state jurisdictions might cause some problems. And, finally, the convening of an international ministerial meeting on fish and wildlife prior to July 1, 1973, might be too soon, although the idea is a good one.

I sincerely hope that these few comments may be of some small value to you and the Committee.

Sincerely,

WILLIAM E. TOWELL,
Executive Vice President.

NORTH AMERICAN FALCONERS ASSOCIATION,
Columbus, Ohio, March 28, 1973.

Hon. JOHN D. DINGELL,
U.S. House of Representatives, Chairman, Subcommittee on Fisheries and Wildlife Conservation, Longworth House Office Building, Washington, D.C.

DEAR MR. DINGELL: Enclosed are two copies of my statement concerning the various House endangered species bills, which were discussed in your Subcommittee on Fisheries and Wildlife Conservation hearings on 26-27 March 1973.

I would appreciate your including this statement in the record. We also respectfully request that the Committee, in their deliberation, give the fullest possible consideration to the philosophy of the use of *endangered* species for recreational purposes; a philosophy that has the support of Federal and State officials, wildlife biologists, and which acknowledges scientific management, rather than protectionism. The legal practice of falconry and the use of endangered species as a conservation tool, are fully compatible; each having the ability to contribute positively to the other.

Thank you in advance for any such consideration you may offer. If I can answer any questions your Subcommittee may have, please do not hesitate to contact me.

Sincerely yours,

ROGER THACKER, *President.*

Enclosure.

STATEMENT OF THE NORTH AMERICAN FALCONERS ASSOCIATION WITH REGARD TO
H.R. 37, H.R. 470, H.R. 471, H.R. 4758, ENDANGERED SPECIES—MARCH 27, 1973

The North American Falconers Association is an international organization dedicated to promoting conservation of the birds of prey, and an appreciation of their value in nature. We promote the scientific study of the raptorial species; their care, welfare, and training; and are establishing traditions which will aid, perpetuate, and further the welfare of falconry and the raptors it employs.

All falconers have a deep personal concern for endangered species legislation, since one subspecies of falcon, which was classically flown in falconry, is now

considered "endangered and threatened with extinction"; and one or two others may be, within the foreseeable future, considered as "likely to become threatened with extinction." We are concerned for two reasons. First and foremost, we are anxious that every possible effort be made to insure the continued existence of all wildlife species. Secondly, we desire that the 4000-year-old field activity of falconry not be unduly curtailed where and when it can be carried on in consonance with sound and proper conservation and wildlife management principles.

Three areas of H.R. 37 are of specific concern to us. The first is a suggested addition and amendment which we feel will clarify and make more comprehensible the intent of the subsection. We refer to Section 7(b), which we feel should be amended to read:

"Whenever the Secretary, pursuant to Section 4 of this Act, lists a species or subspecies as an endangered species which is likely within the foreseeable future to become threatened with extinction, he shall issue such regulations as he deems necessary or advisable to provide for the conservation, protection, restoration, propagation, or *recreational use* of such species or subspecies.

"Any person who: (1) Imports or exports from the United States, receives, or causes to be so imported, received, or exported; or (2) takes or causes to be taken, within the United States, the territorial sea of the United States, Federal lands, or upon the high seas; or (3) ships, carries, or receives by any means in interstate commerce *in violation of these regulations*; any such species or subspecies of fish or wildlife likely within the foreseeable future to become threatened with extinction *shall be subject to punishment in accordance with section 9 of this act.*"

The second subsection is of a much deeper concern to us, and we must oppose it as it is now written. Reference is made to Section 7(c), wherein the Secretary could extend the protection of the Act to species or subspecies which are not endangered, but are difficult to identify from subspecies which might be.

We believe that blanket prohibition is as highly objectionable as blanket permissiveness; and therefore respectfully propose that this subsection be amended by the addition of wording along the following lines:

"Such regulations as may be promulgated in accordance with the authority provided by this subsection shall not prohibit the taking of any species or subspecies of fish or wildlife when in the judgement of the Secretary adequate proof is supplied that the individual specimen in question is not of any species or subspecies listed as an endangered species."

This amendment will simply encourage a more reasonable and flexible approach to the occasional problem of species or subspecies differentiation.

Lastly, we would respectfully ask for an addition to Section 8(a), line 8 to read: "threatened with extinction for *recreational* or scientific".

An addition of this nature we feel would be fully acceptable to scholars of the wildlife management field. For some time now, the Office of Endangered Species has recognized the employment of *endangered* species for recreational purposes, provided such species are not both endangered and low in numbers; it is our feeling that the same principles should be applied in H.R. 37.

With regard to H.R. 4758, we would suggest and seek only two amendments. Such amendments would be first in Section 4(4)(b), which we feel should read:

"Whenever the Secretary, pursuant to Section 2 of this Act, lists a species or subspecies as an endangered species which is likely within the foreseeable future to become threatened with extinction, he shall issue such regulations as he deems necessary and advisable to provide for the conservation, protection, restoration, *propagation and recreational use* of such species or subspecies, including regulations making unlawful any of the acts specified by this section."

An amendment of this nature will be fully consistent with the views of the Office of Endangered Species and wildlife management biologists, who have now for some time recognized the use of endangered species for recreational purposes, provided such species is not both endangered and low in numbers.

The second suggested amendment is in Section 5(a), which we feel should read:

"The Secretary may permit, under such terms and conditions as he may prescribe, any act otherwise prohibited by or pursuant to Section 4 of this Act when he determines, to his satisfaction, that such act will be undertaken for zoological, educational, *recreational* or scientific purposes, or to enhance the survival of such fish and wildlife, but only if he finds that such act will not adversely affect the survival of the wild population or the reproduction capacity of the species or subspecies concerned."

Once again, such an amendment and addition will be fully consistent with professional and biological views in regard to the use of endangered species for recreational purposes.

With regard to H.R. 470, our objections are substantially the same as those already spoken to in H.R. 37.

In conclusion, we laud the principle of these bills in their implied philosophy of management, conservation, and restoration. The North American Falconers Association believes fully in such a philosophy. With regard to this proposed legislation, however, as it is presented, we must strongly oppose H.R. 37, H.R. 470, H.R. 471, because of our stated reasons; but, with the two suggested amendments, we can and will strongly support H.R. 4758.

We sincerely believe that an equitable management approach for our wildlife species is the only answer that has a reasonable chance to reverse the trend towards extinction of all too much of our wild heritage.

ROGER THACKER, *President.*

SPORT FISHING INSTITUTE,
Washington, D.C., April 6, 1973.

HON. JOHN D. DINGELL,
Chairman, Subcommittee on Fisheries and Wildlife Conservation, House Committee on Merchant Marine and Fisheries, House of Representatives, Washington, D.C.

DEAR CONGRESSMAN DINGELL: The Sport Fishing Institute wishes to express its support of endangered species legislation H.R. 37, and we ask that this letter become part of the bill's official hearing record.

Nearly 10 years ago in 1964, the Sport Fishing Institute Board of Directors adopted a resolution concerning scarce resources which outlined as a part of its thrust, a policy of doing everything possible to help safeguard rare and endangered species. In subsequent years we have been particularly active in efforts to identify and preserve rare and endangered species of fish.

We commend you and several other bill sponsors for your leadership in protecting rare and endangered species. We support H.R. 37; however, our years of experience in monitoring other wildlife resources legislation prompts us to urge that Section 6 (Cooperation with the States) be considerably expanded. The natural resource agencies of every state will be interested in this legislation; however, their active participation (which will be absolutely essential to the successful preservation of endangered species) will develop only if they are given active partnership, responsibility, and opportunity in the preservation effort.

Respectfully,

RICHARD H. STROUD,
Executive Vice President.

BELMONT, N.Y., March 12, 1973.

HON. JOHN D. DINGELL,
House Merchant Marine and Fisheries Committee, Fish and Wildlife Conservation Subcommittee, Longworth House Office Building.

DEAR MR. DINGELL: I have been pleased with the outstanding work you have done in the Congress in terms of wildlife conservation. I have a few brief views here that I would like included in the hearing record for H.R. 37. (I would appreciate it if I could be sent a copy of the record after printing.) I would hope that you could keep the hearing record open for 2 weeks after the hearing, as I am in the process of writing my own endangered species bill which I hope the Committee will give serious consideration. I should be able to finish writing my bill in 2 weeks.

After careful consideration of many views and documents, including hearings before this committee last year. I am drafting a bill much like H.R. 37. It differs in at least 2 important aspects: (1) in my proposed bill administrative power is given only to the Interior Secretary, who of course may consult with NOAA and Commerce on species, especially on the marine species which NOAA has much information on. I think Commerce is too exploitation-minded for this job and Interior has done a generally good job on this under the powers they have. (2) I would give species "likely . . . to become threatened w/extinction" the same protection as those "threatened with extinction" except that in the "likely to become threatened" class permits could be granted for scientific purposes and zoo purposes (if the zoo carried on a propagation effort for the species) as well as for strict propagaton purposes. I would include implementing sections for the

Convention on Nature Protection & Wildlife Preservation in the Western Hemisphere and for the recently concluded international convention. Also I would require the Secretary to list extinct species in case they are rediscovered.

A question: in H.R. 37, why is subsection 3(1) (Federal Lands) included and why are "Federal lands" referred to in Sec. 7(a) (B) and 7(b) (2)? It seems to me that this is unnecessary duplication. Please explain. Thank you.

Sincerely,

MILES EHRLICH.

HUNTSVILLE, ALA., March 29, 1973.

HON. LEONOR K. SULLIVAN,
Chairman, Merchant Marine and Fisheries Committee, House Office Building,
Washington, D.C.

DEAR REPRESENTATIVE SULLIVAN: I am submitting the following comments to the hearing record on H.R. 37:

The necessity for further advancing legislation aimed at improving the legal and administrative techniques and practices to protect our endangered species is clear and H.R. 37 is an exemplary measure. Though the bill properly recognizes the importance of habitat (page 5, section 4, line 21) and the educated experts working in our Department of the Interior do work to preserve critical habitat, the development of a habitat inventory within the Department of the Interior and supporting this by inputs under section 6, *Cooperation with the States*, is recommended.

Specific comments on the bill are:

Section 6, page 12—Add:

(g) The agreements and delegations that are authorized to be entered into or made by (b) and (c) of this section 6 shall have the benefit of public hearings and shall where appropriate be evaluated by the preparation of an environmental impact statement to disclose the environmental consequences for public review.

Section 7, page 14—Add:

(d) No flora or wildlife shall be imported into this country until the impact on existing populations has been studiously evaluated by the Secretary and the public voice heard in public hearings before the appropriate agencies of the Department of the Interior, and the Secretary determines the importation will not jeopardize existing population of flora or wildlife if released in this country.

Passage of H.R. 37 is urged.

Sincerely,

LYLE A. TAYLOR.

COMMONWEALTH OF PENNSYLVANIA,
OFFICE OF ATTORNEY GENERAL,
Harrisburg, Pa., May 8, 1973.

SUBCOMMITTEE ON FISHERIES AND WILDLIFE CONSERVATION,
House Merchant Marine and Fisheries Committee, House of Representatives,
Washington, D.C.

GENTLEMEN: The purpose of this communication is to endorse and join in the statement of New York State Attorney General Louis J. Lefkowitz concerning H.R. 4758. The statement was made before the Subcommittee on March 28, 1973.

Very truly yours,

ISRAEL PACKEL, Attorney General.

[Attachments to Mr. Younger's letter of May 23, 1973, follow:]

§ 6530. *Animals; endangered species; prohibited imports*

It is unlawful to import into this state for commercial purposes, to possess with intent to sell, or to sell within the state, the dead body, or any part or product thereof, of any alligator, crocodile, polar bear, leopard, ocelot, tiger, cheetah, jaguar, sable antelope, wolf (*Canis lupus*), zebra, whale, cobra, python, sea turtle, colobus monkey, kangaroo, vicuna, sea otter, free-roaming feral horse, dolphin or porpoise (*Delphinidae*), or Spanish lynx.

* * * Any person who violates any provision of this section is guilty of a misdemeanor and shall be subject to a fine of not less than one thousand dollars (\$1,000) and not to exceed five thousand (\$5,000) or imprisonment in the county jail for not to exceed six months, or both such fine and imprisonment, for each violation.

(Added by Stats.1970, c. 1557, p. 3186, § 1, operative Dec. 1, 1970. Amended by Stats.1971, c. 1283, p. 2511, § 1; Stats.1972, c. 119, p. —, § 2.)

Section 3 of Stats.1972, c. 119, p. —, provided: "This act shall not prohibit the sale or the possession with the intent to sell of any part or product of any dolphin or porpoise (Delphinidae) when the seller can demonstrate that such part or product was imported into this state prior to the effective date of this act."

Sections 3 and 4 of Stats.1970, c. 1557, p. 3186, provided:

"SEC. 3. This act shall not prohibit the sale or the possession with the intent to sell of any part or product of any fish, bird, amphibian, reptile or mammal specified in this act when the seller can demonstrate that such part or product was imported into this state before the effective date of this act, and shall not prohibit the sale of such part or product thereof by an individual not normally engaged in such sale. If it was originally possessed by the seller for his own use and so used by him. This act also shall not prohibit the importation of such animals or any part or product thereof for zoological, educational, or scientific purposes.

NOTE.—Italics indicate changes or additions by amendment.

"SEC. 4. This act shall not prohibit the sale or the possession with the intent to sell of any part or product of a sea otter, if it can be demonstrated by the seller or possessor that such sea otter was obtained lawfully under a permit or license issued by a governmental agency having authority to issue such permit or license."

1971 Amendment. Added "sable antelope, wolf (*Canus lupus*), zebra, whale, cobra, python, sea turtle, colobus monkey, kangaroo"; deleted "red wolf, timber wolf"; and added second paragraph.

1972 Amendment. Added "dolphin or porpoise (Delphinidae)" and substituted the present second paragraph for the former second paragraph which provided: "violation of this section constitutes a misdemeanor."

§ 653p. *Animals, reptiles, etc.; endangered species; prohibited possession*

It is unlawful to possess with the intent to sell, or to sell, within the state, the dead body, or any part or product thereof, of any species or subspecies of any fish, bird, mammal, amphibian, or reptile, the importation of which is illegal under, and which is listed in the Federal Register by the Secretary of the Interior pursuant to, the Endangered Species Conservation Act of 1969 (Public Law 135, 91st Congress).¹

(Added by Stats.1970, c. 1557, p. 3186, § 2, operative Dec. 1, 1970.)

Exemptions, see note under section 653o.

APRIL 5, 1973.

HON. NATHANIEL P. REED,

Assistant Secretary of the Interior for Fish and Wildlife and Parks, Department of the Interior, Washington, D.C.

DEAR NAT: Following your statement on the endangered species legislation, the State of New York provided testimony on the possible conflicts between the Administration legislation and the Mason Act of the State of New York.

I am enclosing a copy of the transcript of that testimony for your consideration and review. As I understand, it the Interior Department's position is that the language of H.R. 4758 does not in any significant respect bar the application of the Mason Act. I would appreciate your clarification of the points raised by this discussion.

Further, the dialogue between the witness and the members raises an allied, but somewhat different issue: the extent to which the Federal Government should act to encourage a uniform system of laws as these may affect interstate and foreign activities affecting endangered species. A total Federal "hands-off" policy might conceivably result in a checkerboard pattern of state laws that might do no one any good. Your analysis of this question would also be most helpful if included in the record of the hearings. As always, I thank you for your generous assistance.

With every good wish.

JOHN D. DINGELL,

Chairman, Subcommittee on Fisheries and Wildlife Conservation and the Environment.

¹ 16 U.S.C.A. §§ 668cc-1 to 668-6.

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., June 13, 1973.

Hon. JOHN D. DINGELL,
*Chairman, Subcommittee on Fisheries and Wildlife Conservation and the
Environment, Committee on Merchant Marine and Fisheries, House of
Representatives, Washington, D.C.*

DEAR MR. CHAIRMAN: This responds to your request of April 5, 1973 for an analysis of testimony received by the Subcommittee from James P. Corcoran, Assistant Attorney General of the State of New York, concerning the relationship between State and Federal laws for the protection of endangered species.

It was not our intention in drafting section 4(e) of H.R. 4758 to: (a) void State laws, such as New York's Mason Act, which apply to the sale of species *not* appearing on the Federal endangered species lists; (b) void such State laws, even if they effectively prohibit sales of species which *would* appear on the Federal lists, whether or not the transactions occur or the articles move in interstate or foreign commerce; (c) to void State laws forbidding importation or exportation of any fish or wildlife for *bona fide* State purposes, such as the protection of human health or wildlife ecology; (d) void all State laws which regulate interstate or foreign commerce in endangered or non-endangered species by "pre-empting the field" of commercial restraints upon the trade in or movement of such fish and wildlife in interstate or foreign commerce.

We did intend, however, to make a distinction between State "taking" laws, and those which expressly or effectively regulate commerce in *federally listed* endangered species. As regards State laws in the former category, subsection 4(e) of the bill was drafted with the intent that the States would be permitted to be more, but not less, restrictive than the prohibitions of the bill, and to prohibit what is permitted by the Congress or the Secretary by way of a permit, exemption or failure to otherwise regulate the taking of a particular species.

However, as to State laws affecting interstate or foreign commerce, or import or export of federally listed species, the Administration has taken the position that the State should not be permitted to prohibit acts which are *expressly* allowed by a Federal permit or exemption, or to permit what is prohibited by Federal law. The basis for the distinction between State "taking" laws and those affecting commerce in federally listed species is grounded on our belief that the Federal program of prohibitions and exceptions should not be thwarted in an area of traditional Federal concern (commerce), especially where treaty obligations are relevant to the issuance of permits or exemptions. In the case of "taking" laws, however, we recognize the more local concern of States and the traditional competence of State agencies. In this connection, subsection 5(c) of the bill provides that the enforcement of Federal "taking" prohibitions could be suspended in States which have taking laws at least as restrictive as those contained in the bill.

We have reviewed the debates held in Committee over Mr. Corcoran's testimony, and acknowledge a possible ambiguity in the language of subsection 4(e). A lack of clarity is created by use of the phrase "... in a manner inconsistent with . . ." which led the Assistant Attorney General of New York to argue that, to the extent the Mason Act speaks to species not federally listed, it is "inconsistent" with Federal law, and therefore, would be voided by subsection 4(e). Whereas Congressional silence as to certain species or in certain regulatory areas need not, in our view, be construed as a Federal *permission* to sell or trade in species not listed pursuant to the bill (*Robertson v. People of the State of California*, 328 U.S. 440 (1946)), subsection 4(e) of the bill does raise this implication.

We, therefore, offer for your consideration the following substitute language to more clearly identify our intent with respect to both State "taking" laws, as well as State laws which regulate commerce:

"Any State law or regulation of the import or export of or the interstate or foreign commerce in endangered species listed pursuant to section 2 of this Act is void to the extent that it may effectively permit what is prohibited by this Act, or its implementing regulations, or prohibits what is authorized pursuant to an exemption or permit provided for in this Act, or its implementing regulations. This Act shall not otherwise be construed to void any State law or regulation which is intended to conserve and manage

migratory, resident, or introduced fish or wildlife, or to permit or prohibit sale of such fish or wildlife. Any State law or regulation respecting the taking of an endangered species listed pursuant to section 2 of this Act may be more restrictive than the exemptions or permits provided for in this Act, or its implementing regulations, but not less restrictive than the prohibitions so defined."

This suggested language reflects our intention to enter a limited field of commerce and "taking" regulations, and permits the States, subject to very narrow limitations, to regulate not only federally-listed species, in company with the Federal Government, but to regulate species not so listed, completely free from the reach of this Act.

Furthermore, and contrary to Mr. Corcoran's recommendation, we do not believe that section 6(e) of H.R. 37, which would declare the supremacy of State law over Federal, across the board, is an acceptable substitute for subsection 4(e) of the bill, in view of the Administration's position on the necessary supremacy of certain aspects of the Federal enforcement program.

We are pleased to assist you in this matter.

Sincerely yours,

DOUGLAS P. WHEELER,
Deputy Assistant Secretary for Fish and Wildlife and Parks.

(Whereupon, at 10:40 p.m., the subcommittee adjourned, subject to the call of the Chair.)

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